Spanish-American Diplomatic Relations Preceding the War of 1898

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Spanish-American Diplomatic Relations Preceding the War of 1898

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PREFACE.

This study is devoted to the consideration of the Diplomatic Relations between Spain and the United States prior to the war of 1898. The principal topics considered in it are the questions relating to the status of the Cubans during the insurrection, the causes or the alleged causes for intervention on the part of the United States, and the efforts of Spain to avoid war.

It may be proper to state that this study was begun as a report to be presented before the Political Science Seminary of the Johns Hopkins University. Its publication has seemed warranted from the fact that, though numerous articles have been published on different phases of the subject, there has appeared no adequate treatment of the topic as a whole. Furthermore, much new material has been made available since many of these articles were published.

The principal sources used in the preparation of this study have been the Foreign Relations of the United States for the years 1896 to 1898 inclusive; Affairs in Cuba, being House Document No. 405 of the 2d session of the 55th Congress, and containing the message of the President and the Report of the Senate Committee on Foreign Relations, relative to affairs in Cuba and our relations with Spain, as well as much correspondence and evidence as to the conditions in Cuba; The Spanish Red Book for 1898; a letter from the Spanish Treaty Claims Commission, being Senate Document No. 25 of the 2d session of the 58th Congress; The Treaty of Peace between the United States and Spain, being Senate Document No. 62, Part I, of the 3d session of the 58th Congress; The Congressional Record; and The Report of Mr. Calderon Carlisle, Legal Adviser to the Spanish Lega-

tion, this report being in two volumes. Of the secondary authorities consulted, Monsieur Le Fur's "La Guerre Hispaño-Américaine de 1898" is by far the most complete and satisfactory, though his book was written before the Foreign Relations of the United States for that period was published and is thus incomplete. References are given in footnotes to the other sources and authorities used.

It is the intention of the writer to continue this study to cover the questions of international law arising during the war, including the negotiations in regard to peace and the treaty of peace itself.

The author's thanks are due to Prof. W. W. Willoughby, at whose suggestion this study was begun, and whose counsel and assistance have been of much help in its preparation.

It is but proper to say, however, that the author is solely responsible for the conclusions he has drawn from the facts as he has found them.

H. E. F.

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SPANISH-AMERICAN DIPLOMATIC RELATIONS PRECEDING THE WAR OF 1898.

CHAPTER I.

BELLIGERENCY OR INSURGENCY?

In order to determine, if possible, the exact status of the Cubans who were in arms against the mother country, as well as to determine the respective rights and duties of the Spanish and American governments before the war, it will be proper to give a brief résumé of the condition of affairs in Cuba prior to the war.

Cuba had been subject to periodic wars or insurrections for some time, *e. g.*, the Bolivar attempt in 1826, the "Black Eagle" insurrection of 1827-29, the disturbances of 1835 and 1844, an attempted revolution in 1854, the desperate struggle from 1868 to 1878, and then the insurrection or revolution of February, 1895.

As is always the case, a civil war works hardships and sufferings,—misery and want and often cruelty being the necessary attendants of internecine struggles even more than of ordinary wars. Cuba was no exception in this regard, but on the contrary, the accompanying evils of such wars were increased by the disposition of the combatants—each side resorting to retaliation, cruelty, etc. There can be no doubt but that as the war progressed, its accompanying evils were multiplied. Each combatant seemed determined to subdue the other, no matter what were the means employed to accomplish that end. Apparently the suffering entailed on others by their methods of warfare gave them little concern—being a secondary matter, the primary object being to overcome no matter what the cost. The reconcentration

orders of Gen. Weyler and the actual destruction of the crops by the insurgents aimed at the same object—the destruction of the food supply of the other.

To show the effect of this we only have to give a few facts. The sugar crop of 1894 was 1,050,000 tons; of 1896, only 200,000 tons, a decrease of 850,000 tons, or over 80 per cent. The tobacco crop of 1894 was 450,000 bales; of 1896, only 50,000 bales, a decrease of 400,000 bales or nearly 90 per cent. The exports in 1895 amounted to $60,000,000; in 1896, to only $15,000,000, a decrease of $45,000,000, or 75 per cent.[1] Since sugar and tobacco were the principal crops of the island, such a diminution necessarily brought destitution. The sanitary conditions were very poor, and when the towns and cities were overcrowded by the reconcentrados, disease and want soon decimated the population. This state of affairs, together with the methods of warfare, brought protests from the United States. These protests were answered by counter protests from Spain as to the attitude of the government at Washington towards the insurgents.

Belligerency.

Before proceeding to the consideration of the specific question of the rights and obligations of the governments before war became a fact, it is necessary to consider this question of belligerency. The query naturally arises "Why did not the United States recognize the insurgents of Cuba as belligerents?" We say "naturally arises" from the fact that when we think of one nation interfering with another or taking sides with one of the combatants, we think, and naturally so it seems, that the war has reached a stage in which the outcome is doubtful, and that no nation would undertake interference unless there was some organized government to take the place of the one to be put aside. At first thought one is inclined to think that if a nation would not be justified in recognizing

[1] Annual Cyclopædia, 1896 and 1897.

a people as belligerents, then that nation should not interfere. It being a fact that the United States did interfere without even recognizing the Cuban insurgents as belligerents, we may well ask why she did not recognize them as such.

What are the circumstances which justify a neutral nation in recognizing insurgents as belligerents? Lawrence[2] says two conditions are necessary: 1. The war must have become a public war in the international sense; 2. The interests of the recognizing state must be affected by it. The first condition is satisfied when the revolted community occupies a definite territory, over which an organized government exercises control. The second condition is satisfied when there are so many points of contact with the recognizing state as to render it necessary to determine how it will treat the parties to the struggle. If the insurrection is confined to the interior of the country, it would be an unfriendly act for other states to recognize the belligerency of the insurgents, though quite otherwise if they were on the frontier or where it is a maritime struggle.

Mr. Hershey,[3] in an article in the Annals of the American Academy of Political Science, writing on the subject of the recognition of Cuban belligerency, says he recognizes the fact that the recognition of belligerency would give little, if any, material aid to the insurgents, though it would be of moral aid by giving them encouragement. He also admits that Cuba could not claim the right of recognition were she to file a much stronger brief at Washington than she could possibly do, since recognition is an act of pure grace on the part of the neutral government. Like Lawrence, he says two classes of facts determine recognition: 1. The existence of actual war in the international sense, *i. e.*, public war; 2. the policy or necessity for it on the part of the neutral state—one being a question of law, the other of policy. He quotes Hall (p. 28) as giving the true ground

[2] "Principles of International Law," pp. 303-304.
[3] Vol. VII, pp. 450-61.

of recognition as matter of policy, that it is "based upon a possibility that the interests of a state may be so affected as to make recognition a reasonable measure of self-protection." Hall[4] states three cases in this connection: (1) The case of a struggle in the midst of a loyal and isolated province. In a case of this kind the question of recognition could hardly arise. (2) The case of a struggle in contiguous territory. Here recognition is a possibility, and at the option of the contiguous state. (3) The case of a maritime war. In this case the presumption is in favor of recognition. After citing the above cases and saying that Hall is about the best authority on the question of belligerency, Hershey admits that it would be rather difficult to consider Cuba in either of the above cases—and certainly not in the second or third cases.

Hershey thinks contiguity or non-contiguity not the essential part of the problem, but that the real ground should be the matter of commercial or property interests and the protection of our citizens. Dana[5] is also quoted as saying that the question for a neutral state to ask is "whether its own rights and interests are so far affected as to require a definition of its own relation to the parties." Among the tests given by Dana as to whether insurgents should be recognized as belligerents, is the following: is there "a *de facto* political organization sufficient in character, population, and resources to constitute it, if left to itself, a state among the nations, reasonably capable of discharging the duties of a state?"

Hershey says that the favorite argument of the newspapers—"because the Spaniards are cruel, therefore we ought to recognize the belligerency of the Cubans"—is not based upon any principle of international law. He, however, claims that, under the circumstances, the recognition of Cuban belligerency would be the exercise of a strictly legal right, and that there would be no impropriety in

[4] "International Law," pp. 29-30. (Ed. of 1880.)
[5] Dana's Wheaton, pp. 34-39, note 15.

following the lines indicated by our own sympathy and interests—proximate and ultimate,—that is, to assist Cuba in the only possible way which is legally permissible, though he concedes that it would be an act of hostility towards Spain unless the struggle amounted to a war, since the recognition of belligerency is a recognition of a *de facto* state.

It is rather difficult to see how Mr. Hershey reaches the conclusion that the United States would be justified in recognizing the belligerency of the Cubans after citing the authorities he does and giving the conditions necessary for recognition, for we may say that he must have clearly seen —in fact he admits it as to the cases given by Hall—that the insurgents of Cuba hardly fulfilled any of the requirements of international law which justify a neutral state in recognizing belligerency, since they were not contiguous to any country, had no well established, responsible government, nor had ships or ports. He himself states the fact that the government was not as well organized as it was in 1868-78.

Since our government did not recognize the belligerency of the insurgents, let us see what reasons were given for not doing so.

President Cleveland,[1] in his message to Congress, December 7, 1896, sometime after Mr. Hershey had written his article, says: "The pretense that civil government exists on the island, except so far as Spain is able to maintain it, has been practically abandoned," and that "at the demand of the commander-in-chief of the insurgent army, the putative Cuban government has now given up all attempt to exercise its functions, leaving that government confessedly (what there is the best reason for supposing it always to have been in fact), a government merely on paper." He also says that belligerency had been urged by some, but no longer, because untimely, and that in practical operation it would be dangerous to our own interests.

[1] For. Rel., 1896, pp. XXIX-XXX.

Prior to this, in the spring of 1896, both Houses of Congress passed a resolution to the effect that the recognition of belligerency should be accorded the insurgents; but the President thought otherwise, and since the power was with him to concede or to withhold recognition, their belligerency was not recognized. Mr. John Bassett Moore, in discussing this question, said: "Belligerency, like independence, is a question of fact, in the determination of which neutral governments do not take into consideration the question of right between the contracting parties."[7] In this same article he also stated that, unless the facts justify recognition, the United States, in according it, would not be maintaining a "strict neutrality."

President McKinley, referring to the resolution of Congress in the spring of 1896, said it behooved the Executive to consider the question soberly, and that he had reached the conclusion that the insurrection did not "possess beyond dispute the attributes of statehood which alone can demand the recognition of belligerency in its favor."[8] He also quoted at length from President Grant's message of December 7, 1875, to sustain his position that belligerency should not be accorded to the insurgents, as the conditions were about the same then as now. The practical results of recognition, he said, would not help the Cubans, but would give Spain the right of search on the high seas, while the United States would have to exercise a strict neutrality and her people could not aid the Cubans as much then as now, since the act of recognition would warn all citizens not to violate neutrality, and, if they did so, it would be at their own peril and they could not expect to be shielded from the consequences. For these reasons he thought recognition unwise and inadmissible. In his message of April 11, 1898, McKinley referred to his message of December, 1897, and said that nothing had happened to change his views; that belligerency

[7] Forum (May, 1896), 21: 288.
[8] For. Rel., 1897, p. XV.

was not warranted by the facts in the case and that the recognition of independence was indefensible, as the requirement for that should be as positive at least as for belligerency, it being a greater act. When it should appear, he continued, that there was a government there capable of performing and discharging the duties of a separate nation, then it could be recognized.[1]

It will be seen then that the government of the United States did not consider that it would be justified in according belligerency to the Cubans, though it may be said that the fact that little, if any, aid would be given them thereby, while Spain would be able to exercise more power and that the United States would have to observe a stricter neutrality, went very far toward influencing the government in its action.

Having seen that the insurgents of Cuba could not be regarded as belligerents, and that our government did not so regard them, the question may be asked, "What was their status?" This leads us to the question of insurgency, which we will now discuss.

Insurgency.

What constitutes insurgency and what rights are to be accorded insurgents by neutral states? What are the rights of the parent state in the case, as well as the rights of neutrals? These are questions which must be determined in regard to the Cuban question, since the uprising there against Spain, the parent state, can be regarded as nothing more nor less than an insurrection. The so-called Republic of Cuba did not possess the attributes requisite for statehood, and so the supporters of it could not be called belligerents, nor could its independence be recognized by other states. However, the uprising was more than a strike, more than the mere violation of law, for a strong military force was necessary to meet them in the field, and, besides, the

[1] Affairs in Cuba, pp. 8-10. (Also For. Rel., 1898.)

avowed aim and purpose of the supporters of the uprising were sufficient to entitle it to be called an insurrection and its adherents, insurgents.

The recognition of insurgency as a status midway between belligerency and the mere violation of, or resistance to, law by a body of men not pursuing a political end, is of comparatively modern origin, and the rights and duties flowing from it have not been definitely fixed. The parent state cannot require neutral states to treat insurgents as pirates and outlaws, for each state can determine for itself what attitude it will take, and this without any offence to the parent state, when resistance has become too powerful for the parent state easily to control it. If those in rebellion have not succeeded in organizing a government which entitles it to belligerency, the neutral states may simply show their attitude by an admission of insurgency.

According to Wilson, in a lecture at the Naval War College, the admission of insurgency implies:

1. That the uprising or insurrection has temporarily gone beyond the control of the state.

2. That the insurrectionary party is pursuing public, political ends by force.

3. That the conditions are such as to affect outside states.

4. That states so affected must have some relations with the insurgents in absence of control by the parent state.[10]

Wilson continues: "The admission of insurgency by a foreign state is a domestic act which can give no offence to the parent state as might be the case in the recognition of belligerency."[11] He also says that an outside state may use force, if necessary, to protect the person and property of its subjects in case of an insurrection, and that it may lawfully enter into relations with insurgent representatives in order to protect its interests. But "foreign states are bound to refrain from all acts implying assistance, moral or material, indirect or direct."[12]

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[10] Lecture on Insurgency at Naval War College, 1900, p. 6.
[11] Ibid., p. 16. [12] Ibid., pp. 13-16.

Having seen what were the general obligations in regard to an admission of insurgency, let us now see what obligations and duties the neutrality laws of the United States and the treaty with Spain of 1795 put upon our government.

The status of insurgency was practically accorded to the uprising in Cuba by the proclamation of President Cleveland, June 12, 1895. The admission of insurgency only puts into operation the domestic neutrality laws as well as treaties with the parent state.

Our neutrality laws were passed by Congress in 1818, and are now contained in Title LXVII of the Revised Statutes of the United States, sections 5281 to 5291 inclusive.

Section 5283 reads as follows:

"Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming, of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or any colony, district, or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than $10,000, and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States."

Section 5286 reads as follows:

"Every person who, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or

prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding $3,000, and imprisoned not more than three years."

Section 5287 gives the President power to use the land and naval forces, or militia in order to enforce these provisions.

These were the only sections of our neutrality laws which could be applied to cases of aid given to the Cubans. Our power of preventing filibustering expeditions was derived from the sections given above. Were these two sections executed and enforced by our government? Spain claimed that they were not, while our government maintained that it did all that could be reasonably expected of a neutral nation and that her laws had been executed.

The question is one rather difficult to determine, but Mr. Calderon Carlisle, legal adviser to the Spanish Legation at Washington, has contributed much towards a better understanding of the question. His reports are in two volumes which contain the Statutes and Proclamations bearing upon the question of our neutrality laws and our obligations under them as well as the important cases which had arisen in regard to them up to June, 1897.

Spain, through her ministers, often called the attention of the government at Washington to the numerous filibustering expeditions which set out from the United States to aid the insurgents. The Spanish agents seem to have been more alert than the United States for evidences of such expeditions, or at least the numerous references to such expeditions about which the government at Washington seemed to know little or nothing, and which, when investigated, proved that the Spanish authorities were correct in their information and suspicions, would suggest it.

Numerous expeditions set out from the United States to aid the insurgents carrying men, arms, and ammunition. Our neutrality laws do not forbid purely commercial transactions, even when including arms and ammunition, and it was on this ground that the courts did not condemn the many vessels which were detained, even when it was a well known fact that they were destined for the insurgents. Until belligerency was recognized all such goods were mere articles of commerce and not contraband, and Spain could not exercise the right of visit and search on the high seas, though the United States ships could prevent them from leaving the waters under her jurisdiction. Mr. Carlisle maintained that shipments of arms, etc., to Cuban insurgents were not commercial transactions, and we cannot do better than quote him.

"It is impossible," said he, "to have any commercial communication with the insurgents in the field. The latter hold no port, and have never had permanent possession of any point upon the seacoast.

"To supply them with arms and munitions, it is absolutely necessary for the Cuban sympathizers in the United States 'to begin, set on foot, prepare and provide the means for a military expedition or enterprise.' They must become the owners of the arms and ammunition before they start, for there can be no commercial consignee in Cuba who can receive them for the insurgents. They must control the vessel which takes them, for its proceedings must be very different from those of a vessel engaged in the commercial and peaceful business of carrying cargo and passengers. The arms must be accompanied by men to land and carry them. These men must themselves be armed in order to safely reach the insurgent forces. In order that the vessel itself may effect a landing she must be provided with a pilot who knows the Cuban waters and the whereabouts and signals of the insurgents, and the vessel must be specially adapted for this war-like use by being provided with boats to effect the landing of the men and arms.

"Without most or all of these conditions not a single shipment of arms and munitions has been made from the United States or landed in the Island of Cuba." [13]

Mr. Carlisle probably stated the question too strongly, especially as regards the judicial determination of the question, since the court only considers the facts as shown on their face. No doubt Mr. Carlisle's reasoning is all very true, but the court cannot always follow such a course.

From the numerous cases which were brought before the courts, as well as from those which were reported as being suspicious, but against which no action whatever was taken, one would be inclined to think that our courts were either too liberal in their interpretation of the law or that our laws were not sufficiently stringent.

We will state briefly the facts of a few cases and the action which was taken.

The "Commodore" became an object of suspicion at New London, Connecticut, in the fall of 1895, and when she went to Wilmington, N. C., a cargo of arms and ammunition was sent by express, the express charges being $942. The arms were put on board at Wilmington and the ship cleared for Cartagena via Southport, N. C. The Captain of the vessel said he did not know what the articles to be shipped were, but that he intended to clear the cargo as mining implements and machinery. About the same time several strange men appeared at Wilmington, but doubtless learning of the proceedings against the ship, disappeared. The ship was detained; the cases marked "hardware" and "agricultural implements" were found to be arms and ammunition—among them being a rapid firing gun of the latest and most improved pattern. It was shown that this gun could be used from the deck of the vessel, and, besides, the ship was equipped with two boats capable of landing four or five tons each. The judge dismissed the libel, refusing to condemn the ship, while no appeal was taken by

[13] Report to De Lôme, I, p. 28.

the United States. It must be admitted that there was no direct evidence that the vessel was fitted out to commit hostilities against Cuba, and Mr. Carlisle thought this unnecessary, as the United States were at peace with the world. He also thought that the court should have taken judicial notice that the President had issued a proclamation as to the insurrection in Cuba, and that the nearness of the island to the destination of the cargo and the false representations of its character, etc., furnished convincing circumstantial proof.[14]

It may be stated that the "Commodore" made other expeditions—one in the spring of 1896. She landed successfully in Cuba a cargo of arms and ammunition, together with men forming a part of the expedition. Two members of the crew told of the landing, though the vessel claimed to have sprung a leak and to have thrown the cargo overboard. She made the trip without license, only having a coastwise license. The vessel was libelled for violation of the navigation laws, but the case was not brought to trial. The Cuban Junta sent one of the witnesses to Japan and the other to Australia, since they were not bound over. No action whatever was brought as to violation of section 5283 of our neutrality laws. The ship repeated the trip in June, 1896, and reported the same tale of leak. According to Mr. Carlisle, no inquiry was made as to the fate of the men, nor was any action ever instituted for violation of the section referred to above.[15]

At the time his first report was made, Mr. Carlisle says that there had been only one conviction of all the cases which had been tried—that being Wiborg, captain of the steamer "Horsa." He was found guilty of taking out a military expedition to Cuba, but no action was ever taken against the vessel itself, though the circumstances disclosed in the record of the case, of which Mr. Carlisle gives a complete copy in the first volume of his report, show that the "Horsa" was specially fitted out to commit hostilities

[14] Ibid., I, p. 29.

[15] Ibid., I, p. 34.

against Cuba, and that she did in fact commit hostilities by landing a hostile body of armed men on the island to make war against Spain.

The "Three Friends," the "Bermuda," the "Dauntless," and others were among the vessels which made expeditions. In many cases no proceedings whatever were instituted, while in several cases they were dismissed, in others acquitted, but only in three cases up to June, 1897, had the parties been found guilty, but in no case had the vessel been finally condemned.

There were 42 expeditions from June 4, 1895, to May 30, 1897; 21 of these were failures from one cause and another; 6 were partial failures; and 15 were successful. In only 11 cases had proceedings been instituted.[36]

The principal question to be decided in the case of the "Three Friends" was whether the recognition of belligerency was necessary in order that sec. 5283, or our neutrality laws, might be applied to vessels employed in the service of the Cuban insurgents. The Court held that such recognition was not necessary.

From the number of expeditions which reached Cuba or failed to reach there for other reasons or causes than prevention by the United States, one would think that the Spanish authorities were justified in protesting that our neutrality laws were not vigorously enforced. They also maintained that if they were enforced, then the laws should be more stringent, for the failure of a government to have laws sufficient for exercising that power was no excuse, as our government maintained against Great Britain as to the Alabama claims. If the laws were sufficient, then failure to enforce them would afford just ground for complaint.

In reply to a note from Mr. Woodford, United States Minister to Spain, Señor Gullon, Secretary of Foreign Affairs, said on October 23, 1897:

"On various occasions the governments of His Majesty

[36] Ibid., II, p. 21.

have found themselves obliged to call the attention of the Government of the United States to the manner in which the so-called laws of neutrality are fulfilled in the territory of the Union. Despite the express provisions of those laws and the doctrines maintained by the American government in the famous Alabama arbitration with regard to the diligence which should be used to avoid whatsoever aggressive act against a friendly nation, it is certain that filibustering expeditions have set forth, and unfortunately continue to set forth, from the United States, and that, in the sight of all men, there is operating in New York an insurrectionary junta which publicly boasts of organizing and maintaining armed hostility and constant provocation against the Spanish nation."[17] In the same note the Spanish Secretary points out that the most effective aid which the United States could render Spain toward securing peace would be to adopt the procedure followed by Van Buren in 1838, Tyler in 1841, Taylor in 1849, Fillmore in 1851, and Pierce in 1855, that is, by means of energetic proclamations, not only warning all who violate the laws of the United States of the punishment to be inflicted, but also notifying them that diplomatic protection of the government would not be afforded them, no matter into what grave situation their wrongful conduct might place them.

He also recalled the doctrine of the United States before the Geneva tribunal which was that "no nation may, under pretext of inadequate laws, fail in the fulfillment of its duties of sovereignty toward another sovereign," and that, if our government alleged that the powers of the executive were limited, then action similar to that taken in 1838 should be pursued. At that time a more stringent law was passed which remained in force two years.

The Spanish government considered the continuance of the Cuban Junta a violation of the comity of nations, if not of our neutrality laws and of the laws of nations. In fact

[17] For. Rel., 1898, p. 585.

it seemed to regard it as a breach of friendship on the part of the United States. No answer was made to the specific protest against the junta referred to in the letter of the Spanish minister.

Again, in a note to Mr. Woodford, February 1, 1898, the Spanish minister protested against the action of our government, saying that "the friendship which is founded upon international law obliges all states, to use the words of the famous South American publicist, Calvo, not only to prevent their own subjects from causing injury to a friendly country, but to exert themselves to prevent any plots, machinations, or combinations of any kind tending to disturb the security of those states with which they maintain relations of peace, friendship, and good harmony, from being planned in their territory." [18]

Calvo, in his "Droit International," says: "International law not only obliges states to prevent their subjects from doing any injury to the dignity and interests of friendly nations and governments; it also imposes on them the strict duty of opposing within their territory any plots, machinations, or combinations whatever, of a character to trouble the security of countries with which they maintain relations of peace, friendship, and good harmony." [19]

After speaking of certain publicists who maintain that a government is not responsible for the organization of hostile expeditions if her own citizens do not take part, the same writer continues: [20] "As to that which concerns political émigrés, on whom alone they would place the responsibility of the attempt which they undertake, they forget that they are doubly culpable: first, to their country, the government of which they meditate to overthrow or to trouble its internal tranquillity; secondly, to the country in which they are refugees, because they morally compromise it, violate its laws, and disregard the privileges of hospitality which

[18] For. Rel., 1898, pp. 661-662.
[19] Vol. I, sec. 380, p. 447. (Ed. of 1880.)
[20] Ibid., p. 447.

they receive. It is sufficient to say that the government which does not oppose the realization of such combinations renders itself an accomplice of the undertaking and cannot avoid the consequences of its culpable conduct." To be sure the United States never for a moment maintained that it was not responsible except where its citizens took part, but it seems clear that the Cuban Junta can be included under what Calvo would consider as plots, machinations, or combinations to do injury to a friendly nation, and it was, no doubt, in this sense that Spain protested against the failure of our government to take any action to suppress an organization which avowedly and publicly collected funds, etc., to aid the insurgents.

Señor Gullon also referred to Montesquieu as practically maintaining in his Spirit of Laws, Vol. I, p. 3, the same views as Calvo, and that Fiore, the Italian publicist, had the same thing in mind when he said: "Every state should refrain from ordering or authorizing, in its own territory, acts of any kind tending, directly or indirectly, to injure other states, even when it is not obliged to do so by laws or treaties."[21] (Fiore, Ch. II, sec. 598.)

Continuing, Señor Gullon says: "It is upon this view of international friendship that the Spanish government bases its opinion with regard to the extension of the obligations arising or derived from such friendship in the intercourse of civilized nations, and hence the request which it has addressed to the Washington Cabinet on numerous occasions, to prevent filibustering expeditions against Cuba, and to dissolve or prosecute the junta which is sitting publicly in New York, and which is the active and permanent center of attacks upon the Spanish nation, and which, from the territory of the Union, is organizing and maintaining hostilities against a country which is living in perfect peace with the United States."

He later mentions the fact that the junta is composed

[21] For. Rel., 1898, p. 662.

principally of naturalized Americans, but born subjects of the Spanish government, and adds: "The principles upon which eternal law reposes, as much or more than law itself, demand the prompt suppression of that center of conspiracy, from which every oversight is watched and every legal subterfuge is made use of to violate the so-called neutrality laws of the Republic of North America, for friendly nations have seldom or never been seen to tolerate in their midst organizations whose chief object, or, rather, whose only mission consists in plotting against the integrity of the territory of another friendly nation."[32]

At an earlier date, August 4, 1897, the Duke of Tetuán (Señor Gullon), in a note to the Spanish minister at Washington, De Lôme, in reply to Secretary Sherman's note of June 26, 1897, in which Sherman spoke of reconcentrados, uncivilized warfare, devastation, etc., said: "Moreover, we must bear in mind that this system of the total destruction of Cuban property has always been advocated by the filibustering junta at New York, composed, in great part, of naturalized North Americans, and that this junta has issued the most cruel orders; so that by coincidence, the authors of the admittedly abominable devastation which, according to the Secretary of State, has so greatly aroused the sympathies of the North American people, are citizens of the Union and organizations working without hindrance in its bosom."[33] Therefore, the Spanish Secretary of Foreign Affairs concludes, the most humane and reasonable course would be the suppression of the junta, without which, he asserts, the insurrection would long ago have ceased.

De Lôme, the Spanish Minister at Washington, in reply to Sherman's note, to which reference is made above, said, June 30, that if the American people would, "instead of aiding and abetting the violations of law which are constantly committed by the Cuban emigrants organized here

[32] Ibid., p. 663.
[33] Spanish Red Book, 1898, p. 31.

for the purpose of making war upon a nation friendly to the United States," aid the Federal government in preventing filibustering expeditions, the evils of the desolating war would soon cease.[34] In a letter to his home government, January 20, 1898, he stated that he had had an interview with Day in which he urged that the President should "make the filibustering junta understand that they must cease their operations here."[35]

Señor Polo, Spanish Minister to the United States, in a note to his home government, March 16, 1898, said that in a conversation with Mr. Day he mentioned the fact that if the United States would but disband the junta, it would all be quickly over, and that Mr. Day replied that this "was not possible under American law and in the present state of feeling."[36] This is the only answer that we have been able to find that the United States ever made to the protests of the Spanish government against the existence of the junta in New York. It does not appear that the United States maintained that it was in harmony with the principles of international law and good friendship to permit such a hostile organization to continue its operations, but that it was not contrary to American law and so could not be disbanded. If that was the only reason, then the Spanish contention that, if the laws were not sufficient, a more stringent law should be enacted was justified, for the United States had strongly maintained the doctrine before the Geneva tribunal that inefficiency of law is inexcusable. It may be said, however, that there is no specific treatment of subjects of this character by publicists unless Calvo's statement be applied.

However, Hall says: "*Prima facie* a state is of course responsible for all acts or omissions taking place within its territory by which another state or the subjects of the latter are injuriously affected." "If the acts done are undisguisedly open or of common notoriety, the state,

[34] Ibid., p. 28. [35] Ibid., p. 67. [36] Ibid., p. 92.

when they are of sufficient importance, is obviously responsible for not using proper means to repress them; if they are effectually concealed or if for sufficient reason the state has failed to repress them, it as obviously becomes responsible by way of complicity after the act, if its government does not inflict punishment to the extent of its legal powers."[37] There can be no question but that the junta was avowedly and openly operating in New York to aid the Cuban insurgents, and that the results of its operations were very injurious to the Spanish cause in Cuba, and so of sufficient importance to make our government responsible, according to Hall, though we are not at all sure that Hall intended to cover such cases as this, especially since the Spanish Government never referred to him in support of their protests.

In the reply of October 23, 1897, to Secretary Sherman's note of September 23, preceding, Señor Gullon says: "He who is not disposed to grant the means does not earnestly desire the end in view; and in this case the end, to wit, peace, will be attained by the United States exerting itself energetically to enforce with friendly zeal the letter and spirit of its neutrality laws."[38] He further said that if the support which the Cubans were receiving from the United States were cut off and if the Cubans were shown that the United States was truly the friend of Spain, then, their hopes of possible conflict between the two countries being annihilated, they would cease fighting. He recalled the fact that the "Silver Heels" had left New York in spite of the previous notification given by the Spanish Legation and before the eyes of the Federal authorities, and added that such things should not be repeated if the United States desired to prove her peaceful and friendly intentions. As to the "Silver Heels" it may be said that it was afterwards shown by our government that it was mainly due to the Spanish authorities in New York that the "Silver Heels" escaped, as

[37] "International Law," pp. 178 and 180.
[38] For. Rel., 1898, p. 586.

Spanish officers and detectives were given charge of the matter. Strictly speaking, however, this would hardly justify the Federal authorities in letting the ship escape.

Le Fur, a French writer on international law, speaking of the filibustering expeditions in his "La Guerre Hispano-Américaine," says there were many expeditions due to the negligence or complicity of local authorities, and that they did not run any serious risk of being caught. He also says that the United States protested when any ships were seized by the Spanish or when men were tried by military authorities. He quotes Secretary Gage as making it known that out of 60 known expeditions, 33 had been apprehended by the United States, and that if the Spanish government had exercised the same vigilance they would have suffered little from such expeditions.[29] It seems that Secretary Gage was hardly justified in making that statement, as it was certainly more difficult to intercept the expeditions on the coast of Cuba than to prevent them from leaving the ports of the United States, since Spain could not stop them on the high seas and the ships could keep off the coast and not attempt to land when any Spanish vessel was in sight. Besides, it was the special duty of the United States by her neutrality laws and international obligations to prevent such expeditions. Our government never failed to assert that she was doing all within her power to prevent such expeditions, but when we remember that nearly half of the expeditions were never apprehended, it seems that we must conclude that there was laxity of duty somewhere, and that just as in the case of our government against England, Spain could, in certain instances, have justly demanded damages.

Hon. E. J. Phelps,[30] one-time minister to England, in an open letter to Ex-Gov. Levi P. Morton, March 28, 1898, says marshals arrive too late to prevent expeditions from sailing, and adds that one-twentieth part of the naval force that the government was trying to collect for what was called

[29] p. 9.
[30] N. Y. Herald, Mar. 29, 1898.

"the purposes of national defence" would have put an end to the only source from which the rebellion had been kept alive, and that the United States would be liable for damages.

It may be said for our government, however, that millions of dollars (according to McKinley's message—another estimate being $2,000,000) were spent in trying to enforce our neutrality laws, and that it is recognized as an impossibility to prevent such expeditions entirely, though it cannot be denied that if the risk run had been made greater and had adequate punishment been meted out to them at first, such as confiscation of vessel, imprisonment of men, fines, etc., that fewer attempts would have been made.

In conclusion, it seems that it may safely be said that our government should have enforced our neutrality laws more energetically, thus preventing many of the filibustering expeditions, and that steps should have been taken to at least restrict or limit the activity of the Cuban Junta, if not to suppress it entirely.

Let us now consider what were the duties and obligations of Spain in the matter as well as her rights. As has already been noted, she did not have the right of visit and search on the high seas, since this could only be exercised in case of recognition of belligerency by the United States or by Spain herself; she could, however, exercise the right within the three-mile limit, though it was rather difficult for her to derive any benefit therefrom, since the filibustering expeditions would never attempt to land at a port, or to venture near any part of the coast when a Spanish vessel was in sight. Until belligerency is recognized, the parent state may be held responsible, generally speaking, for the acts of the insurgents as regards neutrals; that is, Spain would be responsible for damages for injury done Americans or their property by the insurgents.

By section VII of the treaty of 1795, Spain was bound to afford protection to Americans in her dominions, give them a fair judicial trial, etc. This question was often involved

during the war in Cuba, the United States protesting that her citizens, even when captured with arms in aid of the rebellion, should be tried before the civil, not the military, tribunals. The Spaniards captured the ship "Competitor" landing arms and men. Protests came from the United States that some of the men were American citizens and should be tried before a civil instead of a military tribunal. This was also true of men captured on land. While contending that she had the right to try them by a military tribunal, since they were not residing in Cuba and were also captured while attempting to aid the insurgents, yet Spain, in order to avoid giving any cause for irritation, yielded and gave them a civil trial, and in nearly every case released the men. This was especially true of the men taken with the "Competitor," all being pardoned by the Queen. It seems that Spain indeed acted very leniently in this regard. Many Cubans had come to the United States to take out naturalization papers in order to have the protection of the United States, and had then gone back to wage war against Spain. In nearly every case the men claiming the protection of our government were of this class. If the President had issued a proclamation, similar to that issued by Van Buren, warning all who were captured in arms against Spain or giving aid to the insurgents, that the diplomatic protection of our government would not be given, it is likely that fewer would have taken the risk.

CHAPTER II.

INTERVENTION.

The question of intervention may be considered the main topic of this study; at least it is the most important and interesting phase of the whole question of our relations with Spain. Before entering upon the discussion of the facts in the case, we have thought it well to give a digest of the views held by the publicists and writers on international law as to the right of intervention, in order that we may be the better able to understand the questions involved.

Lawrence, in his "Principles of International Law," says, "Independence may be defined as the right of a state to manage all its affairs, whether external or internal, without interference from other states, as long as it respects the corresponding right possessed by each fully sovereign member of the family of nations."[1] In another place he says: "It is easy to see that the right of a state to work out its own destiny in its own way would no longer exist, if international law gave to other states a general right of interference whenever they were horrified at cruelties committed in the course of a war or an internal struggle. All sorts of ambitious projects would be able to shelter themselves behind an alleged feeling of humanity. . . . . But, as we have already discovered, interventions on the ground of humanity have, under very exceptional circumstances, a moral, though not a legal justification."[2]

Hall[3] says that interventions to check illegal interventions of another state "are based upon the principle that a state is at liberty to oppose the commission of any act, which in the

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[1] p. 111.
[2] Ibid., p. 132.
[3] "International Law," p. 244.

eye of the law (*i. e.*, international law) is a wrong." In other words, any nation has the right to interfere to keep another nation from violating international law or to prevent unjust or illegal intervention by another power. In regard to interventions on the real or pretended grounds of humanity and religion, he says they "must be defended, in so far as they can be defended at all, upon the same principle, coupled with the assumption that international law forbids the conduct of rulers to their subjects, and of parties in a state toward each other, which such interventions are intended to repress."[4] He would hardly grant, however, the assumption that international law takes cognizance of purely internal affairs. He thinks it unfortunate that publicists have not unanimously laid down the principle that interventions are never legal except for self-preservation, or when a breach of the law as between states has taken place, or when the whole body of civilized powers have authorized it.[5] That is, that there must be a general recognition of the right of intervention in each particular case and that interventions to prevent cruelty, oppression, etc., should be illegal unless authorized by all the states, and that even in this case the power should not be exercised except in extreme cases and where the motives of the intervening states are purely unselfish.

Rivier[6] says there are only two cases in which one state may interfere in the internal affairs of another: (1) When this right has been conferred upon it by a convention; that is, when all the states deem that interference is justifiable and designate what state or states shall intervene. (2) For the purpose of self-preservation. When the laws and security of the nation are put in jeopardy by the social or political conditions or conduct of another state, then the endangered state may interfere.

Rivier quotes from the circular letter or dispatch of Castle-

[4] Ibid., p. 245.
[5] Ibid., pp. 246-47.
[6] "Principes du Droit des Gens," I, pp. 392-93.

reagh of January 19, 1821, in which the latter asserts that states can only intervene "where their own immediate security or essential interests are seriously endangered by the internal transactions of another state."[7] This seems to be the view of Rivier also. According to his view, a single nation should not interfere with another nation because the latter is violating the laws or rights of humanity, for these laws may be violated without endangering the safety of another state. But when such violations endanger human society, and thus the society of nations, then the nations (states) may intervene for their own self-preservation.

Bonfils[8] goes further than any as to the right of intervention when he says, "there is not, there cannot be any right of intervention; because there is not a right against a right. Right is the respective independence of the states; intervention is the violation of independence." He admits that intervention is a *political fact,* but not a *right.* He says Bluntschli at first condemns intervention, though admitting it in certain cases. Funck-Bentano and Sorel also think that intervention is not a right; in fact they hold almost the same opinion as Bonfils. Martens says it is always illegal. Bonfils says, "when they (the states) have judged it profitable to their policy, to their ambition, to interfere with the affairs of another state, they have claimed the right of intervention."[9]

Phillimore says reason and the practice of nations appear to sanction two general cases in which intervention is justifiable: "I. Sometimes, but rarely, in the domestic concerns and internal rights of self-government, incident, as we have seen, to every state. II. More frequently, and upon far surer grounds, with respect to the territorial acquisitions or foreign relations of other states, when such acquisitions or relations threaten the peace and safety of other states."[10]

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[7] Ibid., I, p. 398.
[8] "Droit International Public," pp. 159-60.
[9] Ibid., p. 160.
[10] "International Law," I, p. 467.

Under I he gives the following as just grounds:

1. "Self-defence, when the Domestic Institutions of a state are inconsistent with the peace and safety of other states." He thinks the interference of the European powers in France during the French Revolution was justifiable for this reason, since she declared herself hostile to all monarchical forms of government and asserted her intention to aid other peoples in gaining their independence.

2. "The Rights and Duties of a Guarantee.

3. "The Invitation of the Belligerent Parties in a Civil War.

4. "The Protection of a Reversionary Right or Interest."[11]

He also says that foreign powers may intervene "to stay the shedding of blood by a protracted and devastating civil war," and that this ground of intervention in behalf of the general interests of humanity has frequently been put forward, but seldom "without others of greater and more legitimate weight to support it. . . . . As an accessory to others, this ground may be defensible; but as a substantive and solitary justification of Intervention in the affairs of another country, it can scarcely be admitted into the code of international law."[12]

Woolsey says that intervention can be justified only as an extreme measure and then on two grounds only: (1) "That it is demanded by self-preservation; (2) That some extraordinary state of things is brought about by the crime of a government against its subjects."[13]

Wheaton[14] recognizes interference for the sake of repose and commercial interests as a principle of international law, and gives the intervention of the Christian powers of Europe in favor of the Greeks (1827) as an example.

We may conclude then that it is generally recognized by the authorities on international law that a state may inter-

[11] Ibid., I, pp. 467-68.
[12] Ibid., I, p. 475.
[13] "International Law," p. 57, sec. 42.
[14] Elements of International Law, Part II, sec. 69.

vene when self-preservation demands it; that is, that such intervention is always legitimate and justifiable. There is only one other case in which there is any approach towards unanimity among the authorities, and that is, that when all the nations sanction it, intervention may be justifiable. With these exceptions, the authorities are generally agreed that intervention is unjustifiable, at any rate illegal. Some of them do not think that intervention on any ground is legal, while a few think that intervention may be justifiable for other than the two reasons given above. We may say, however, that only in extreme, extraordinary, and exceptional cases can intervention be at all justifiable, and only in the two cases cited above—self-preservation and where sanctioned by all the states. Of course this is from a legal point of view, only few recognizing moral principles, *i. e.*, they do not think that one state of itself should judge as to whether another state is committing immoral, inhuman acts.

Viewed according to the above principles as laid down by international law writers, let us scrutinize the reasons given by the United States, that is, by Congress and the President, for intervention in the affairs of Spain in Cuba, in order to see whether those reasons are compatible with the principles above stated; in other words, to see whether the reasons given by Congress and the President justified intervention according to international law principles. If so, then we must compare those reasons with the actual state of affairs in Cuba and the relations with Spain to see whether the claims or contentions put forward by our government had any just basis or not. If there was no such just basis, then intervention was illegal and unjustified. We may furthermore say that if the objects to be obtained by intervention, that is, the purposes for which the United States intervened, could have been obtained by other means, *e. g.*, by arbitration, diplomacy, or moral pressure, then the action of our government was hasty, to say the least, and to that extent unwarranted.

President McKinley, in his message to Congress, April

11, 1898, gave the following as just grounds for intervention:

"First. In the cause of humanity and to put an end to the barbarities, bloodshed, starvation, and horrible miseries now existing there, and which the parties to the conflict are either unable or unwilling to stop or mitigate. It is no answer to say this is all in another country, belonging to another nation, and is, therefore, none of our business. It is specially our duty, for it is right at our door.

"Second. We owe it to our citizens in Cuba to afford them that protection and indemnity for life and property which no government there can or will afford, and to that end to terminate the conditions that deprive them of legal protection.

"Third. The right to intervene may be justified by the very serious injury to the commerce, trade, and business of our people, and by the wanton destruction of property and devastation of the island.

"Fourth, and which is of the utmost importance. The present condition of affairs in Cuba is a constant menace to our peace, and entails upon the government an enormous expense. With such a conflict waged for years in an island so near us and with which our people have such trade and business relations; when the lives and liberty of our citizens are in constant danger and their property destroyed and themselves ruined; where our trading vessels are liable to seizure and are seized at our very door by warships of a foreign nation, the expeditions of filibustering that we are powerless to prevent altogether, and the irritating questions and entanglements thus arising—all these and others that I need not mention, with the resulting strained relations, are a constant menace to our peace, and compel us to keep on a semi-war footing with a nation with which we are at peace." [13]

He also stated that the condition of things in Cuba was

[13] For. Rel., 1898, p. 757.

strikingly illustrated by the destruction of the battleship *Maine.*

The above reasons, however, were not the ones given by the Senate Committee on Foreign Relations, though in part they agree, the Committee practically endorsing what the President had said. Mr. Davis, for the Committee, made the affair of the *Maine* figure rather prominently in the question of intervention. In fact, it seems to have been the most important factor, considering the amount of space given to it, and though not specifically declared to be the cause for favoring intervention, one cannot read the report of the Committee and the debates in Congress without feeling that it exercised greater influence than any other question. The report says: "It is the opinion of your Committee, having considered the testimony submitted to the board of inquiry, in connection with further testimony taken by the Committee and with the relevant and established facts presented by the events of the last three years, that the destruction of the *Maine* was compassed either by the official act of the Spanish authorities or was made possible by a negligence on their part so willing and gross as to be equivalent in culpability to positive criminal action."[36]

Again, the Committee says in another connection: "Upon due consideration of all of the relevant facts of the relations of this government with Spain, including the destruction of the *Maine,* and of the history of the rebellion, it is the opinion of your Committee that the United States ought at once to recognize the independence of the people of Cuba, and also ought to intervene to the end that the war and its unexampled atrocities shall cease," etc.[37] The report even goes so far as to say:[38] "We cannot consent upon any condition that the depopulated portions of Cuba shall be recolonized by Spain any more than she should be allowed to found a new colony in any other part of this hemisphere or island

[36] Affairs in Cuba, p. V of Sen. Rept. No. 885.
[37] Ibid., p. VII.
[38] Ibid., p. X.

thereof. Either act is regarded by the United States as dangerous to our peace and safety."

The Committee later gives the following reasons for intervention: "The present situation in Cuba has become a menace to the peace of the world, and especially to the peace and safety of the United States. Spain has bid for European intervention, thus far apparently without success, but the conditions which make such intervention possible should be removed at once."[19] In another place the barbarity of the Spaniards is also given as justifiable cause.

The Report seems to admit that the publicists do not recognize the right of intervention on humanitarian grounds, for it quotes from Arntz, who justifies intervention on those grounds, but it admits that he is an extremist. It also refers to Vattel, Wheaton, Bluntschli, and Mamiani, as saying it is right to succor an oppressed race, but not sanctioning any of the analogous grounds of intervention. It cites Heffter as saying that a state might assist either side after civil war has broken out, though denying the right of intervention. Calvo and Fiore think that states can intervene to put an end to slaughter.[20]

The Committee, after referring to the above authorities, says: "If these opinions state the correct rule, as we believe they do, the right of intervention by the United States in the present instance is indubitable."[21]

The Committee must have recognized the weakness of such a conclusion, for, after trying to find sufficient justification in international law for intervention, it refers to other interventions, saying: "To sustain repeated interventions during the present century no law has been invoked. They have been acts of necessity and policy."[22] It also refers to the policies of the "balance of power" and the "Monroe Doctrine," and one is led to conclude that the intimation or inference to be drawn is that intervention here is one of policy.

[19] Ibid., p. XX.
[20] Ibid., pp. XIII and XIV.
[21] Ibid., p. XIV.
[22] Ibid., p. XV.

The following resolution was reported by the Committee and its adoption urged upon the Senate:

"Whereas, The abhorrent conditions which have existed for more than three years in the island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of a United States battleship, with 266 of its officers and crew, while on a friendly visit in the harbor of Havana, and cannot longer be endured, as has been set forth by the President of the United States in his message to Congress of April 11, 1898, upon which the action of Congress was invoked; therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, First. That the people of the Island of Cuba are, and of right ought to be, free and independent.

Second. That it is the duty of the United States to demand, and the government of the United States does hereby demand, that the government of Spain at once relinquish its authority and government in the Island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect."[33]

Mr. Mills[34] of Texas, a member of the Committee, submitted his views to accompany the report (Sen. R. 149). Among other things he claimed that the right of self-preservation gave us the moral right to possess the island if we thought proper, or to control its possession by others.

We may then sum up the reasons given by the President and Congress for intervention as follows:

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[33] Ibid., p. XXII. [34] Ibid., p. XXV.

1. On account of the *Maine* disaster (very important in Congress).

2. Because the continuance of the struggle was a menace to the peace and safety of the United States—the so-called right of self-preservation.

3. On account of the commercial and financial interests involved.

4. In order to protect the lives and property of American citizens in the island.

5. For the sake of humanity—to stop bloodshed and suffering.

The next question to be considered is, which, if any, of the above reasons are sanctioned by the best authorities on international law or by the practice of nations? On the face of it, only one, the second reason or cause, the right of self-preservation, is sanctioned by the best authorities as justifying intervention; that is, where one nation of itself interferes. We shall, however, include in this paper the inquiry as to whether the facts in the case were sufficient to warrant intervention on either of the above alleged grounds as given by the United States.

The Destruction of the Maine.

Having seen that the destruction of the *Maine* played such an important rôle, especially in Congress, let us now consider the facts in the case and see to what extent, if any, Spain was to blame, and to what extent there was cause for interference on the part of the United States.

The *Maine* was sent to Havana January 25, 1898, on a so-called friendly visit. Mr. Day[*] had wired Gen. Lee the day before, saying: "It is the purpose of this government to resume friendly naval visits at Cuban ports. In that view the *Maine* will call at the port of Havana in a day or two. Please arrange for a friendly interchange of calls with authorities." Lee advised that the visit be postponed six or

[*] Affairs in Cuba, p. 84.

seven days to give opportunity for the excitement on account of the riot and demonstration against autonomists to disappear. In an interview with the Spanish authorities, Lee said they profess to think that the United States has ulterior motives in sending the ship. They also think, he continues, that it will obstruct autonomy, cause a demonstration, etc. They ask that the visit be postponed until they can hear from Madrid, as delay will be unimportant if the visit is purely a friendly one."[36]

The ship reached Havana the same day that Lee wired Day about the interview with the Spanish officials (January 25). On February 4, Secretary Day wired Lee that the Secretary of the Navy thought the vessel should not remain long for sanitary reasons. He also asked if a vessel should be kept there. Lee replied the same day that there would be no sanitary danger until April or May, and that ship or ships should be kept there all the time now. "We should not relinquish position of peaceful control of situation, or conditions would be worse than if vessel had never been sent. . . . First-class battleship should replace present one if released, as object-lesson and to counteract Spanish opinion of our navy."[37] The *Maine* was blown up and destroyed eleven days later, on the night of February 15, 1898. Lee said the Spanish rendered every assistance possible and expressed the deepest sorrow on account of the disaster. He wired that cause was unknown, and that the Spanish government would like to unite with the United States in having the bottom of the ship and harbor jointly examined. The United States refused this, but said that every facility would be afforded the Spanish in making investigation—each acting independently—and this was the method pursued.

The questions to be determined were: What was the cause of the destruction of the *Maine* and where was the responsibility to be placed? If the explosion was from the inside, then no question of responsibility could be laid at

[36] Ibid., p. 85. [37] Ibid., p. 86.

Spain's door, but if from the outside, the question to determine was, to what extent was Spain responsible? These were difficult questions to determine, especially to determine them fairly and justly, since they were to be decided by the interested parties acting independently of each other.

The board of inquiry appointed by the United States to investigate the matter reached the conclusion that the explosion was from the outside, but did not undertake to say who was responsible for it, in fact did not consider the question of responsibility at all. The Spanish commission or board reached the conclusion that the explosion was from the interior.

Granting that the explosion was from the exterior, was the Spanish government responsible? Mr. MacFarland, writing in the Albany Law Journal for April, 1898, says that nations are regarded as having given each other a standing invitation to visit their ports with ships of war in times of peace, and that there is a promise of implied hospitality and security. The greater the danger, the more vigilance should be taken to protect them, or, as Wheaton in his Digest says, "not perfect vigilance, but such as is reasonable under the circumstances."[28] He (MacFarland) contended that Spain must prove a case of non-liability, and that arbitration was out of the question until Spain made a *prima facie* case of non-liability.

His argument seems to be rather extreme, for in a certain sense nations are regarded as individuals in their relations with each other, and in this sense might it not be demanded of the United States to prove that Spain was responsible for the disaster. At least, it cannot be expected that Spain should prove non-liability while the other interested party sits as judge and jury combined to decide whether the proof or evidence is sufficient.

If there is to be arbitration on any question, it would seem that questions of the character of the *Maine* should be con-

[28] Digest, sec. 402.

sidered by impartial tribunals when the powers concerned cannot reach a satisfactory agreement. This is just what Spain proposed, but at no time did our government intimate that it was willing to submit the question to other than men of her own selection.

On March 23, 1898, Mr. Woodford, United States Minister to Spain, informed the Spanish government that the report of the *Maine* commission was in the President's hands, but that he was not authorized to disclose its character or conclusions. He added, however, that he was authorized to say that, unless a satisfactory agreement was reached in a few days which would assure immediate and honorable peace, the President would submit the whole question of our relations with Spain, including the *Maine,* to the decision of Congress.[29] This note cannot be regarded in any other light than that of a threat, for Spain was aware of what view Congress would take of the *Maine* affair. By this note, our government showed that it was willing to submit such a delicate question as that of the *Maine* to the decision of a popular, patriotic body of men whose verdict could be known in advance. To a certain extent it was a threat, as it were, held over Spain to induce or force her to yield to our demands.

Spain realized the danger of having the question submitted to Congress, and so on the following day, March 24, her Minister of State sent identical notes to all her foreign representatives, informing them of the intended or threatened action of the President and at the same time outlining the course which would be pursued by the Spanish government.[30] This course was carried out the next day, March 25, in a note to Mr. Woodford. In this note, the Spanish Minister called attention to the fact that the American government had refused to examine the *Maine* jointly with Spain, and that it was inadmissible and unjustifiable to submit the report of the board of inquiry to a political assembly,

[29] Spanish Red Book, 1898, p. 95.
[30] Ibid., p. 95.

especially without knowing the report of the Spanish board. To place the report before such an assembly without correction, explanation, or counter proof of any kind, revealed, he said, the intention of allowing national enthusiasm to form an *a priori* judgment, not based on facts or proof, and to reject, without knowing the terms, any statements which might give rise to doubt or seem distasteful. There can be no question but that this was a true and valid criticism, especially when taken in connection with the following quotation from the same note: "The most elementary sense of justice makes it in such a case a duty to previously examine and discuss in an atmosphere of absolute calmness the two different inquiries tending to one common end. Only in the supposition of an irreconcilable discrepancy or complete opposition between the one and the other would it be proper to submit them, as equity demands, to evidence less prone to prejudice and, if necessary, to fresh investigations and different judges."[31] By thus showing her willingness to submit the question to others, in case they could not agree, Spain assumed an irreproachable position—a position much higher than that taken by the United States. Spain renewed the offer again on March 31, saying she was willing "to submit to an arbitration the differences which may arise in this matter." Again on April 10, Señor Polo de Bernabé, in a note to Secretary Sherman, said his government was willing to submit the *Maine* to the judgment of impartial and disinterested experts, accepting in advance their decision.[32] McKinley, in his message of the next day, mentions this fact, but says he had made no reply to the Spanish proposal. And why? The internal evidence and the later facts seem to give only one answer, and that is, that our government had practically decided on war and that the *Maine* question was considered the best thing to arouse popular enthusiasm. This will explain why our government, which has generally seemed so favorable to arbitration, was

[31] Ibid., pp. 96-97.

[32] For. Rel., 1898, p. 749.

unwilling to submit the *Maine* to an impartial tribunal, not even giving Spain an answer to her proposal, nor ever, so far as we have been able to find, assigning any reason for her action. Apparently she wanted to keep the whole question in her own hands, and this view may be strengthened by the fact that our war-cry was "Remember the Maine."

We cannot but conclude that the action of our government in regard to the *Maine* was indefensible, even if it was fully convinced of the fact that the ship was destroyed by torpedo or submarine mine, for that fact would not certainly fix responsibility on Spain. A government is only held to exercise due diligence in preventing injury to others, and just as our government maintained that it was impossible to prevent filibustering expeditions altogether—could not guarantee that there would be none—neither could Spain guarantee absolutely that no injury would be done our battleship. Even if negligence on the part of the Spanish government could be shown, still there would hardly be any justification for war, especially since the government proposed to abide by the decision of a neutral tribunal, and so was willing to make amends. Only in case that it could be shown that the government itself had authorized the deed, would there be any cause for war. The Senate Committee on Foreign Affairs assumed as much, charging the destruction of the ship either to the official act of the Spanish authorities or to a negligence so gross and willing as to amount to criminal culpability. But the Senate Committee was not the proper body to decide such an important matter. If settlement could not be reached through diplomatic channels, then it seems that an impartial tribunal should have passed judgment as to whether Spain was responsible in case it was shown that the explosion was from the exterior, for this would have to be shown before Spain could, in any way, be considered responsible.

This extended treatment of the *Maine* disaster is justified from the fact that, in all probability, there would have been no war, had our battleship not been destroyed. It has been

suggested that the insurgents blew it up in order to cause a rupture between the United States and Spain. However, there is no evidence to show this, though it would seem more plausible than to say that the Spanish government had authorized it. The debates in Congress, the silence of the State Department as to arbitration, the statements of Woodford, Woolsey, Taylor, and others almost establish the fact that war would have been postponed, if not avoided, but for the *Maine*.

We think we may safely say in conclusion that there was neither legal nor moral justification for intervention on account of the destruction of our battleship, and that the future will condemn the action of our government in regard to it.

Self-Preservation.

As we have seen, the publicists practically agree that intervention is justifiable when the safety and peace of the intervening state are seriously endangered, *i. e.*, where the right of self-preservation is involved. If it can be shown that the peace and safety of the United States, and so her existence, were endangered—seriously endangered—then the conclusion must be that intervention was justifiable. But were the peace and safety of the United States seriously endangered by the struggle in Cuba? What constitutes a menace to the safety and peace of another country of a sufficient nature to warrant or justify intervention? These are the questions which present themselves when we consider the question of the intervention of the United States in Cuba.

President McKinley, in his message of April 11, 1898, after giving three other reasons which would justify intervention, said: "Fourth, and which is of the utmost importance. The present condition of affairs in Cuba is a constant menace to our peace, and entails upon this Government an enormous expense." We thus see that the President put considerable stress upon this particular reason as justifying intervention.

Hannis Taylor, writing on the Cuban question in the North American Review for November, 1897, quotes Phillimore to show that the United States would be justified in intervening. Phillimore (Vol. I, p. 464) says: "The right of self-defence incident to every state may in certain circumstances carry with it the necessity of *intervening* in the relations, and to a certain extent of controlling the conduct of another state; and this where the interest of the *intervener* is not immediately but mediately and indirectly affected." It seems that Mr. Taylor's contention on this point is rather far-fetched, for Phillimore distinctly says that intervention in the domestic concerns and internal rights is rarely justified. He says, "self-defence, when the domestic institutions of a state are inconsistent with the peace and safety of other states," [88] might justify intervention. As we have mentioned before, he gives the interference of the European powers in France as an example, since France had declared herself hostile to all monarchical forms of government. It is thus practically the right of self-preservation, and in this there is practical unanimity that intervention is justifiable; but then it must be shown that the circumstances are such as to endanger the existence of the state. Thus a reasonable interpretation of Phillimore will not cover cases like our intervention in Cuba, unless our existence was threatened.

Le Fur says that intervention for self-defence should only take place in case of threatened attack or where the wrongs are of a sufficient nature to imperil the existence of the state intervening, and he asks whether either of these conditions could be ascribed to Spain or the conditions in Cuba. He answers in the negative, saying that Spain tried every means to avoid the war—so that there was no threatened attack. While citizens of the United States suffered loss from the existence of the war, he states that Spain also

[88] Phillimore, I, p. 467.

suffered loss from the fact that American citizens sent filibustering expeditions to the insurgents."[34]

Woolsey[35] does not even mention the fact of self-preservation as a cause for intervention. He gives three reasons which he thinks justifies intervention:

1. The burden of neutrality, *i. e.*, the expense and trouble of preserving neutrality.

2. The dictates of our commercial interests.

3. The call of humanity.

Mr. Woolsey is not an extremist, though he upholds the action of our government on general principles, and to that extent may be said to be an advocate of intervention. He does not say that our government was right in going to the extent of armed intervention, but that intervention in this case was as justifiable as any previous intervention and with as correct motives."[36]

Thus his omission of the claim of self-preservation as a justifying cause for intervention is all the more noteworthy, and we may say, therefore, that he did not consider it a cause or reason which could be well defended, for in a sense his book is a defence of our foreign policy.

It may be said in conclusion then, that the United States was not justified in intervening on account of threatened menace to our peace and safety—that self-preservation was not endangered in the least, so far as we can see. Mr. Phelps, whom we have quoted before, also concludes that there was no necessity for intervention on account of self-defence—no right to vindicate or wrong to redress that entitled us to interfere by arms in support of the Cuban rebellion.

Commercial and Financial Interests.

War is more or less injurious to the commerce of countries which have relations with the parties at war, and this is

[34] "La Guerre Hispaño-Américaine, de 1898," pp. 35-40.
[35] "America's Foreign Policy," p. 64.
[36] Ibid., p. 84.

necessarily so. The authorities, however, do not sanction intervention on that account; that is, where commerce is injured from the mere fact that war exists and where the injury may be said to be done legitimately. And we may say that the practice of nations seems to be in accord with the theories of the writers. In contravention of this last statement, it may be alleged that intervention in behalf of Greece in 1827 was partly, if not largely, due to the injury done to commerce, but it must be borne in mind that the injury there was from pirates which neither Greeks nor Turks could or would suppress, so that in this case we may say that the injury done was illegitimate, since it was not a necessary consequence of the war. It may also be said that that intervention was more defendible in that three nations, not one, decided that the war should end, though it is not the purpose of this paper to defend or justify that intervention. There is certainly no instance, so far as we know, where a single nation has intervened on account of injury done to her commerce, though we concede that there *might* be a case in which a concert of the powers might intervene on account of such injury, if it had become enormous.

As we have already noticed, injury to commerce is not one of the reasons which justify intervention according to publicists, so we must conclude that, theoretically at least, the United States had not the right to intervene on account of the injury done to her commerce so long as Spain acted legitimately and within her own just rights. This, we deem it, would be true however great the injury, unless our very existence as a nation was thereby endangered, and in such case it would be a question of self-preservation.

The question thus becomes one of fact, not of theory. Was our commerce with Cuba illegitimately checked or destroyed? Did Spain exceed her rights in preventing or checking trade with the island? If so, did the United States protest against such action and urge the Spanish government to desist from it? Was our nation's existence serious-

ly threatened or endangered by the loss of trade with Cuba? As to the last question, we may answer it in the negative without fear of contradiction, since our principal imports were sugar and tobacco, both of which we could get along without. Mr. Woodford seemed to think that the sugar question was very vital, for in a conversation with the British Ambassador at Madrid, he informed him how largely the people of the United States were dependent upon Cuba for their sugar supplies. He stated that we did not produce more than one-tenth of what we consumed, and that the people were averse to paying bounties for raising beets, though the bounty system had enabled Europe to produce her great supplies of sugar. Continuing, in his letter to Secretary Sherman, September 13, 1897, he said: "I endeavored to impress upon him that the sugar of Cuba is as vital to our people as are the wheat and cotton of India and Egypt to Great Britain."[*] If sugar be necessary to our existence, then we could resort to the bounty system. It can by no means be maintained that our country was seriously endangered on account of the injury sustained by our commerce during the insurrection in Cuba.

The right of war necessarily implies the right of the combatants to subjugate the other by any and every method which is recognized by civilized countries as legitimate. This of course includes the right of either combatant to destroy the means of sustenance of the other, no matter whence the source. If their supplies are derived entirely from a domestic source, then that source can be legitimately cut off if possible; if the supplies are wholly, or in part, derived from foreign countries, there can be no question but that either combatant may justly prevent such supplies from reaching their destination—from coming into the enemy's camp. The loss of trade will necessarily injure the neutral states which have hitherto carried on trade with the people now at war. But this is no just cause for interven-

[*] For. Rel., 1898, pp. 562-63.

tion or war. It might be answered with equal justification that a prohibitive tariff would likewise destroy the commerce of other nations and would, according to this doctrine, be a cause for war, but we take it that no one would have the presumption to say that such a tariff would justify war or intervention.

We therefore consider it as self-evident that the injury sustained by trade during the course of war,—that is, as a natural result of the war—does not give the least justification for the interference of outsiders. Did Spain use any but legitimate means to prevent the trade of the United States with the insurgents? With what facts we have, the answer must certainly be in the negative. In fact, she did not exercise as strict a patrol as she should have used to keep supplies from the insurgents. Secretary Gage said that if Spain had intercepted as many filibustering expeditions as the United States did, few would have reached the island. The ports were in Spanish hands and the Spanish government had the legitimate right to prevent the landing of any goods she saw fit—no blockade being necessary. If vessels attempted to land goods at others than recognized ports, of course they could have been seized and the goods confiscated, just as in case of goods smuggled into the United States. As to imports, we take it that Spain could have prevented the importation of any goods she might have seen fit, and that no country would have had cause for complaint.

We have been unable to find a single instance where the United States protested that her commerce was illegally injured. Our government did, however, often state the fact that our trade was seriously crippled. The Spanish government exacted both import and export duties, but this had been done before the insurrection broke out, and of course she was only exercising a right which belonged to her. In May, 1896, Spain, through the Governor-General of Cuba, issued an order prohibiting the exportation of leaf tobacco from Cuba. Secretary Olney wired Mr. Taylor

that the order did not give reasonable time for Americans to export the tobacco already purchased, though prior to this, Mr. Olney had wired protest against the order if it prohibited the exportation of tobacco actually owned by Americans. Taylor wired the next day, May 21, 1896, that the order was to sustain the tobacco factories in Cuba, as the tobacco supply was short, and that the order would only be temporary. Mr. Olney, on the following day, replied that the motive for such order was fully appreciated, and that the United States did not want to embarrass Spain in the exercise of her legitimate sovereign rights. The Spanish government informed Mr. Taylor on May 25, that an order had been sent to the Cuban authorities, May 8, not only to allow the exportation of tobacco actually owned, but also to permit tobacco which had been contracted for before the issuance of the prohibitive order to be shipped. The United States thus obtained more than she had asked for. By these concessions Spain not only showed a sense of justice and equity, but also demonstrated her desire and willingness to avoid giving any cause for irritation on the part of the United States. The Spanish government was acting within her rights to issue and to maintain the order of prohibition, and this right was never questioned by the United States.[88] There was necessarily delay in permitting the shipment of the tobacco owned or contracted for, for the Spanish government could not be expected to allow this except on sufficient proof to show that it was owned or contracted for prior to May 16, 1896, the day on which the order was issued. Sometimes this delay seems to have been needlessly long, but, from the evidence at hand, there is nothing to show that the final exportation of tobacco owned or contracted by the Americans before the order went into effect was forbidden. The order was revoked December 31, 1897.[89]

[88] For. Rel., 1896, pp. 684-695.
[89] For. Rel., 1897, pp. 487-501.

The Spanish government recognized that the struggle in Cuba was detrimental to the trade of the United States, for Señor Gullon, October 23, 1897, in reply to Mr. Woodford's note of September 23, preceding, said that it was hardly possible to conceive that a lasting disturbance could exist in one country without affecting the neighboring countries and justifying all of these in cherishing the desire for peace, even to the extent of proffering friendly councils, "but never interference or intrusion."[*] This contention of the Spanish government was never denied or questioned by the United States.

The defenders of intervention on commercial and financial grounds say that the struggle had been lagging, that there were no prospects of peace or subjugation, and that the present conditions would continue indefinitely. Granting that this was all true, did that give just cause for intervention? What is to be the limit at which war may continue before intervention takes place? Who is to fix the limit? Can another nation justly, legitimately say when war shall stop on account of her own commercial interests? Evidently, not. Our own civil war would illustrate this. That great struggle certainly was detrimental to Europe—especially to England, since she was dependent on the South for her cotton supplies, but did England consider that sufficient to warrant interference? Would our government have tolerated such doctrines? Then it should at least be consistent in her demands. The action of our Spanish Claims Commission also sustains the contention that the Spanish government acted within its rights.

Mr. Phelps, in the letter to which reference has already been made, says "it was too well settled to admit of dispute that the inconvenience and loss suffered by the commerce of neutral states when war existed, though often considerable, constitute no ground for intervention, but must be borne. The loss of Great Britain in this respect is much

[*] For. Rel., 1898, p. 583.

greater than ours." [41] He also refers to the Civil War, saying there was no talk of intervention, and that if there had been, it would not have been tolerated.

While admitting that the struggle in Cuba worked great injury to the commerce of the United States, we must say, in truth and justice to Spain, that there seems to be no evidence to show that our trade was improperly crippled, and that there was, therefore, no justification for intervention on that ground so long as the injury did not seriously threaten the safety of the country.

The Protection of the Lives and Property of American Citizens in Cuba.

The American-owned property in Cuba has been variously estimated at from 30 to 50 millions of dollars. A considerable amount was, of course, partially or entirely destroyed and most of that which was not gave little or no return for some time. Complaints were time and again made against the destruction of property owned by Americans and claims for damages filed with the State Department at Washington. These claims amounted to about $9,000,000 for property by January 22, 1897, while about $1,000,000 for arrest and imprisonment [42] (about $60,000,000 before Spanish Claims Commission). Many of these claims were no doubt exorbitant, as is generally the case with government claims, some doubtless being almost, if not entirely, unfounded.

The destruction of American property in the island and the danger to the lives of Americans have been considered by some as just cause for complaint and even for intervention; in fact, the protection of American property and citizens was one of the motives given by McKinley for intervention. It seems that American citizens could not claim fairer treatment than Spanish citizens—that they could not claim entire exemption from the burdens of war.

[41] N. Y. Herald, March 29, 1898.
[42] For. Rel., 1896, p. 710.

Their property was therefore subject to the same laws and conditions as other property, and where fair treatment was accorded, where there was no discrimination, it would seem that there should have been no complaint. So far as we have been able to find there is not a single instance in which American-owned property was not treated with the same consideration as Spanish-owned property. Of course the property owners in either case could bring claim against the Spanish government for damages, *i. e.*, where property was destroyed or taken for use by the government, but it would be discretionary with the government as to whether or not it would pay the claims.

It is true that the greater amount of the property destroyed or made useless for the time being was brought about by the insurgents, yet, in certain cases, the Spanish government would be responsible for damages. Le Fur[48] admits that this is so—that the Spanish government would be responsible for acts committed by the insurgents, though he says such acts should not be ascribed to the Spanish government or her citizens, as was done by the United States. The Spanish Claims Commission took a different view of the matter, holding that the Spanish government was only responsible for the acts which she could have prevented, but failed to do so. This position will be considered later.

We have been unable to find that our government put forward the claim during Cleveland's administration or the earlier part of McKinley's that the destruction of American property in Cuba was a cause for intervention. Even in the administration of McKinley, the correspondence does not reveal the fact that our government ever held such views. The claim was not made until war was decided upon, and then it seems that it was put forward to strengthen the grounds or claims for intervention, which must have been recognized as being rather weak. No authority, so far as

[48] "La Guerre Hispaño-Américaine de 1898," p. 38.

we know, recognizes the right of intervention on account of loss naturally resulting to property in the course of a war, nor did our government cite a single authority to sustain its claim. There might be some reason for complications with a country after the struggle was over if it refused to make any reparation for injuries received.

Our government often complained of the maltreatment of American citizens in Cuba—their imprisonment, seizure of their property, etc., as being in violation of the treaty of 1795. We have been unable to find where Spain palpably violated that treaty, and that where the treaty seemed to be violated, the exigencies of the case warranted her actions. These claims for injuries, imprisonment, etc., amounted to over $1,000,000, and were often unfounded.

Probably the Delgado case would illustrate the true state of affairs as well as any other. Dr. Delgado and his father claimed to be American citizens. Mr. Delgado wrote a letter to Consul-General Williams at Havana saying that he and his son were being persecuted by the Spanish authorities; that his son had been seriously wounded by bullet and machete at the command of a Spanish General. Mr. Williams secured proper orders from the Governor-General of Cuba to have the Delgados brought to Havana under safe-conduct. This was done and the Delgados and one other witness testified to their maltreatment by Spanish officers—that they, five or six prisoners, were tied together and orders given to Spanish soldiers to use machete on them, and that the younger Delgado was also shot. Our government protested strongly against such treatment and demanded of the Spanish government the punishment of the General in command and a large indemnity for the Delgados. The correspondence on this subject lasted from March 10, 1896 to October 31. The Spanish officials had nine witnesses to testify that they had not so maltreated them, and practically established the fact that the insurgents had committed the outrage. Our government, however, still insisted on its claims, but on October 31, 1896, Dr. Delgado

and his counsel wrote to our State Department to desist from the further prosecution of his claim for personal injuries, thus apparently acknowledging the Spanish contention."[45] Fifty pages are given to the correspondence in this case, which after all may be said to have been unfounded.

The case of Julio Sanguily was another which gave rise to considerable correspondence and protests. A certificate of naturalization had been issued to Sanguily August 6, 1878, and passport given him by the State Department on the following day. He had resided in Cuba since that time, having taken a prominent part in the rebellion of 1868-78. He was tried before a civil tribunal for aiding and abetting in the insurrection—being an agent of the Cuban Junta of New York and having appointed officers to enlist troops, etc. He was found guilty and sentenced to life imprisonment. This was confirmed on appeal, but the Queen pardoned him, no doubt to keep the good will of the United States."[46]

A list of American citizens, native and naturalized, arrested and imprisoned in Cuba from February 24, 1895 to January 22, 1897 is given in Foreign Relations, 1898, pp. 747-50. There were 74 arrests in all, of whom 60 or more were natives of Cuba, but naturalized citizens of the United States—only about 4 or 5 being of pure American blood, as some were born in the United States of Cuban parents. Some of these were only imprisoned for a short time, being released as soon as it could be shown that they were entirely neutral. Even the "Competitor" prisoners were released—these being taken while landing supplies for the insurgents. McKinley, in his message of December 6, 1897, says there was then not a single American citizen in prison so far as our government was aware.

Cleveland in his message of December 7, 1896, speaking of Cubans taking out naturalization papers, says: "Some of them, though Cubans at heart and in all their feelings and

[45] For. Rel., 1896, pp. 582-631. [46] Ibid., pp. 750-846.

interests, have taken out papers as naturalized citizens of the United States, a proceeding resorted to with a view to possible protection by this government, and not unnaturally regarded with much indignation by the country of their origin." There certainly can be no question but that such things—especially when the Cubans returned to Cuba and in various ways aided the insurgents—were irritating to the Spanish government.

After our government had obtained the release of all her citizens which had been under arrest in Cuba, some of whom were possibly guilty, could it justly and fairly allege the lack of protection and cruel treatment of her citizens as a ground for intervening? Only when a government persists, without apparent cause, in continuing the persecution or maltreatment of foreigners, does there seem cause for armed intervention. This was by no means the case with Spain. There is little doubt in our mind, after a careful perusal of the correspondence on the question, but that we received more than we could justly expect or demand, and that from no strong power would we have received such lenient treatment. This leniency was no doubt largely due to the fact that Spain did not want to give the United States any cause whatever for intervention.

We must conclude then, that our government was not warranted in intervening on account of loss of property in Cuba or of maltreatment of American citizens. This brings us to the last cause which was alleged as justification for intervention—viz., humanity.

Humanity.

As we have already seen, intervention on purely humanitarian grounds is not legally justifiable according to the publicists, nor morally unless all selfish motives or purposes are wanting, and even in such cases, the authorities think that one nation of itself should not decide as to when intervention should take place. Judged according to the above statement, the United States could hardly be justified for

intervening in Cuba. However, it may not be amiss to consider the actual conditions, so far as possible, which existed in the island and to see to what extent the Spanish government was responsible for such conditions, what efforts she made to ameliorate them and what she was willing to try to do. Of course this will involve the diplomatic correspondence between the two countries as well as other evidence. The testimony of both sides should be critically scrutinized, and a conclusion approximating the true conditions reached.

The concentration orders of General Weyler have probably been criticized more severely than any other acts of the Spanish government. McKinley said it was not civilized warfare, but extermination. It was issued as a military exigency. Cleveland, in his message of December 1896, said that it was the policy of the Spanish government to protect property at first but that bands of marauders plundered the country until the Spanish government had abandoned its previous undertaking and was acting on the practice of the insurgents. This practice was the wholesale destruction of property to prevent its use by the enemy. He said it was in pursuance of this policy that the concentration orders were issued, though he did not say it was uncivilized warfare. It seems a very cruel order, but we must remember that the conditions were such as probably to justify it. The insurgents did not fight in the open, but fought more in the manner of guerrillas. They plundered and robbed the plantations, burnt the canefields, charged large sums for exemption, and thus were enabled to continue the contest. It was to put an end to such a condition of affairs that the order was issued to concentrate the people in towns and cities. For this reason the Spaniards were charged with preventing the people from tilling their lands and thus of supporting themselves. There can be no doubt but that this order worked hardships and brought sufferings to the people, but all warfare does this more or less. Nor did the order accomplish the purpose for which

it was issued, since the insurgents were enabled to live from the fruits which grew wild.

When Blanco assumed control, this harsh order was revoked to a certain extent. All who had farms as owners or lessees and could re-establish themselves were to apply for permission to return to them. This also included all laborers and artisans who would reside in the farm or plantation where they worked and would pass the night in the fortified place of the farm. This order was issued November 13, 1897.[46] The entire revocation of the order was made later. Consul-General Lee, who was certainly no partisan of the Spaniards, said in a letter to Secretary Day, November 23, 1897: "The Spanish authorities are sincere in doing all in their power to encourage, protect, and promote the grinding of sugar. The grinding season commences in December. The insurgent leaders have given instructions to prevent grinding wherever it can be done, because by diminishing the export of sugar the Spanish government revenues are decreased. It will be very difficult for the Spanish authorities to prevent cane burning, because one man at night can start a fire which will burn hundreds of acres, just as a single individual could ignite a prairie by throwing a match into the dry grass. I am confident that General Blanco, and Pando, his chieff of staff, as well as Dr. Congosto, the secretary-general, with all of whom I have had conversations, are perfectly conscientious in their desire to relieve the distress of those suffering from the effects of Weyler's reconcentration order, but unfortunately they have not the means to carry out such benevolent purposes."[47] He also states that most of the reconcentrados are non-combatants—women and children.

Gomez, in a letter to McKinley, sent through Mr. Lee, February 15, 1898, said that the revolution had never prevented any one from earning a living, no matter what his

[46] Affairs in Cuba, p. 6. [47] Ibid., p. 8.

nationality.[48] The letter quoted above from Mr. Lee as well as one from Owen McGarr, United States Consul at Cienfuegos, contradict this. The latter, in a letter to Mr. Day,[49] January 10, 1898, said that all the cane mills in his consular jurisdiction, 23 in number, were operating, but that predatory parties of insurgents had made frequent attempts to fire the canefields and that it required constant and active vigilance to prevent it, as it was an easy matter for one man to start a fire that would destroy hundreds of acres unless promptly checked. He further said that the sugar crop was the supply of all classes and if a large part of it were destroyed, famine would result.

Mr. Brice, Consul-General at Matanzas, in a letter to Mr. Day, November 17, 1897, said that most of the people opposed autonomy, and that the order to allow reconcentrados to return to the country was so restricted as practically to prohibit, but added that even if they could return, little good could result as insurgents had declared that no one should be allowed to grind in the province of Matanzas; that they had already burned the cane on some plantations and that little, if any, sugar would be made.[50] In another letter, December 17, 1897, he said that grinding was being done on a few plantations which were heavily guarded by Spanish troops, but that the insurgents had also been paid to permit it, $10,000 being given them by one owner for permission to grind his cane.[51]

Mr. Hyatt, United States Consul at Santiago de Cuba, in a letter to Mr. Day, November 26, 1897, said that all political prisoners were freed, but none of them were Americans, as these had been freed from time to time by special orders, which was cause of favorable comment to our nation. In a letter of December 5, 1897, he said he believed two-thirds of the people were missing as compared with three years ago, and that this was true as regards the Spanish army.

[48] Ibid., p. 25.
[49] Ibid., p. 28.
[50] Ibid., p. 29.
[51] Ibid., p. 30.

He noted the fact that the insurgents had fired seven cannon shots into the buildings of an American who was preparing to grind cane.[83] In a letter of December 21, 1897, he stated that an agreement would have to be made with the insurgents before cane could be ground.[84] Calixto Garcia, Commander-in-Chief of the Department of the East, issued orders on November 6, 1897, that all persons who should come within their lines commissioned by the enemy with proposals to submit to Spain should be tried and punished as spies.[85]

Mr. Hyatt, in a letter of January 8, 1898, said that the Spanish government had made energetic and thorough campaign to make autonomy successful, but that Cubans were generally opposed to it—that Spanish officials were removed and Cuban autonomists given their places, etc.[86] In letter[87] of January 12, 1898, he stated that the insurgents had issued orders not to allow any cane to be ground, so that the benefits which would have accrued from the revocation of the reconcentrado order were thwarted by the insurgents. Gomez, in his order of December 2, 1897, said that it was a political measure of war to prohibit the realization of the sugar crop of 1897 and 1898, and that violations would be punished according to their laws. This order was inclosed in Mr. Hyatt's letter. According to all these statements, with his own order as evidence against him, we must conclude that the statement of Gomez, in his letter to McKinley, to which we have referred, was utterly false.

Mr. Hyatt[87] in another letter, January 31, 1898, told about the passenger train which was blown up by dynamite bombs placed there by insurgents. On the next day he wrote that cruel acts were again coming to the front, but that there was some cause for it, as the stoppage of all agricultural pursuits and the blowing up of cars containing innocent people could not be condoned even under the guise of war. He said that Blanco's mild and humane policy was but feebly sec-

[83] Ibid., p. 34.
[84] Ibid., p. 36.
[85] Ibid., p. 33.
[86] Ibid., p. 38.
[87] Ibid., pp. 38-39.
[87] Ibid., p. 40.

onded by his own followers, while the insurgents laughed at his efforts. He quoted Colonel Marsh, of General Blanco's staff, as saying: "Spain fails to comprehend that Cuba has, as it were, two mothers—a political one, which is Spain; a commercial one, which is the United States; and that the political mother fails to see that the commercial mother has any rights, while the commercial mother cannot shake off her responsibility, for God has made them next-door neighbors."[48]

Mr. Barker, United States Consul at Sagua La Grande, wrote to the State Department November 20, 1897, that the planters would not grind cane without assurance of immunity from Gomez.[49] December 28, he stated that he knew that strict orders had been given by the insurgents that mills would not be allowed to grind under any circumstances under penalty of having property destroyed.[50]

All of these writers tell of suffering, death, and starvation, in their respective cities and districts, but all speak favorably of the efforts made by the Spanish officials to ameliorate the sufferings and their willingness to lend every possible aid in caring for the destitute. There can be no question as to the great destitution of the people and of disease and death—the results of such destitution. This was even true in the Spanish army. Some of these witnesses said it was impossible for pen to describe the actual condition of the people.

The question then becomes, not as to whether there were destitution, disease, and suffering, but who caused this condition of affairs and how was it to be ameliorated? There seems to be no doubt but that complaint could justly be made against both combatants, but we do not think that it can be fairly maintained that the Spaniards should receive the greater blame. Their acts, on the whole, were more humane than those of the insurgents, and especially was this true after General Blanco assumed command, and it was

[48] Ibid., p. 41. [49] Ibid., p. 46. [50] Ibid., p. 50.

also true as long as Campos was Governor-General. Of course it is not denied that the Spanish government was the really responsible government, in fact it was the only government; but for the time being it could not prevent the insurgents from acting as they did. It is as equally true that the Spanish government was the only party which really tried to better the condition of the people. To be sure it was by General Weyler's orders that the non-combatants were gathered into the towns, and the fact that it was considered necessary for military purposes does not lessen the evils of it, but it should at least soften our condemnation of it. It was unquestionably an extremely harsh measure, but Weyler thought that it would take such measures to put down the insurrection. To the people of the South such acts are odious and call to mind Sherman's march to the sea and through the Carolinas, and Sheridan's orders to lay waste the Shenandoah Valley. These two acts, however much suffering and devastation followed in their train, have been justified, or at least tried to be justified, as necessary for military purposes, but who will deny that such acts were cruel? Was intervention of other nations justifiable on that account? The United States would have answered emphatically in the negative, but no nation ever intimated that such acts were cause for outside interference. There were many cruel, inhuman acts in the Civil War, as in all wars, but among civilized nations no country has ever assumed to interfere with war in another on account of cruel treatment or suffering resulting from the war. War is bad at its best, and when it assumes its worst form, General Sherman's definition does not seem inappropriate.

The United States did not intervene, nor did it talk of intervening when General Weyler issued his reconcentrado order. Not even a protest was made against it at the time. When the effect was perceived after some time, our government protested, or at least spoke of the horrible state of affairs and of the effect it had on the American

people. When the Sagasta ministry came into power, the cruel policy of Weyler was reversed. The Sagasta ministry also promised autonomy, and the Queen issued a proclamation granting this. The question of intervention did not become at all acute until after the proclamation granting autonomy and Blanco's order revoking the reconcentrado order, nor did matters then reach a stage of strained relations until after the destruction of the *Maine*. There seems to have been slow improvement in the condition of the people in Cuba, but this was made so from the fact that the insurgents prevented Blanco's order from having any effect.

Judge Phelps, in the New York Herald, March 29, 1898, says that if intervention is justifiable for sake of humanity, then intervention should take place in every civil war, and adds that "the humanity of peace is better than the humanity of war." Le Fur compares the devastation in Cuba to that of Sherman in Georgia and of Sheridan in the Shenandoah, and asks whether the latter justified European intervention. He discards the motive of humanity as justifying intervention in case of Cuba, and adds, "that which is stinging (bitter) in this affair, is to see it invoked by the United States. For lack of any other reason the remembrance of the war of secession should have prevented them." He also says that, granting that there were causes —cruelty, tyranny, etc., which would give plausible motive for intervention, as in case of the Armenian massacres, —there should be two conditions added: (1) The intervention should be disinterested, not for conquest; (2) One power by itself should not interfere when there is a question of public international order. Only when several nations unite is there afforded a sufficient guarantee of the disinterestedness of action.[81]

There is hardly a case in history where intervention has taken place on purely humanitarian grounds. Le Fur says that the insurgents were as barbarous as the Spaniards and

[81] "La Guerre Hispaño-Américaine de 1898," pp. 42-43.

that there would be no justification for intervention in favor of insurgents of this character. The evidence seems to show that the insurgents were more cruel and resorted more to uncivilized warfare than did the Spaniards. Judge Phelps also takes the view that the insurgents brought on the destitution themselves, and in a sense this is true, for they destroyed more than the Spaniards did. Le Fur also says in another place that the United States thinks her will (or wish) is law, that she has an international law of her own and valid only for herself, the Monroe Doctrine, but that it was reversed in this case. In conclusion, he says either the intervention will have been purely disinterested (but not known definitely until the whole matter is settled), and then, in that case even, it will be censurable as based on insufficient motives or reasons; or it will end by the annexation of Cuba, and perhaps of the Philippines and Porto Rico, and then a war of pure ambition, a war of conquest, rendered more censurable still by the motives of humanity and disinterestedness in virtue of which it was undertaken, will have been waged.[46]

An argument which our government never neglected to use was that Spain was unable to subdue the insurgents. On the face of it, this has an appearance of truth, and it might have been proved a fact for that matter. This can be said, however, in contravention of this contention of our government, that Spain claimed that the proclamation granting autonomy had strengthened her cause, and that the insurgents would have been considerably weakened by it had not encouragement been given by our government in sending the *Maine* to Havana. Senator Wellington[47] said in a speech on April 16, 1898, that we rather encouraged the Cubans not to accept autonomy by the Senate resolution recognizing their belligerency, and that if our government had used its moral influence in favor of it, the Cubans would have ac-

[46] Ibid., pp. 46-48.
[47] Cong. Record, 55th Cong., 2d Sess., p. 3952.

cepted it. It seems that that would have been a proper course to pursue, especially since Spain rather requested it; that is, if our government really wanted to see the war end for humanity's sake. The previous insurrection had lasted ten years, and had been put down. Why might this one not be put down within that time? Spain had a considerable army in Cuba—at least twice as large as that of the insurgents. But if the condition of affairs were such that it could not longer be tolerated, why did not our government suggest that fact to the other powers and get their views on the subject? It may be answered that we do not need to consult the powers of Europe as to American questions and that it would be a lowering of our prestige to do so. But Secretary Fish did this very thing during the other insurrection and just after the settlement of the "Virginius" affair, but an unfavorable answer was given."

The question of humanity was undoubtedly the strongest ground, in fact the only ground, so far as we can see, on which the United States could, with any degree of strength, lay claim for justification for intervention. But was our government really justified on this ground? That is a very difficult question to answer. Legally, certainly not; morally, probably so, *i. e.*, if we are to judge the results, for the conditions of the people have been much improved, but if the fact that the improvement of the people justified it, then it would be a question for each country to decide whether it could not give the people of another country a better form of government, improve their material, moral, social, political, or intellectual condition, etc., and so justify intervention. Intervention would then be justified in order to force a people to be free *nolens volens,* as Rousseau would say.

Granting that intervention was necessary, it might be asked in whose favor should it be made? Which party

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" Latané, "Diplomatic Relations of the United States and Spanish America," pp. 164-170.

really had the more stable government, promised more for the people, in way of a stable government and safety. Judging from the Haytaian government, Santo Domingo, and some of the South and Central American Republics, one might have supposed that the Cubans, left to themselves, would be a failure as far as government was concerned. The result of self-government has been better than the most optimistic had hoped, but it was the hand of the American government which really gave stability to it and laid the foundation of the present Cuban government.

The condition of things in Cuba demanded a remedy, and had the United States confined her action to this question, there would be little, if any, cause for reproach or censure. If armed intervention were necessary to secure an improvement of conditions there, few objections could have been raised against such action. It is true that most of the authorities do not recognize interventions on purely humanitarian grounds unless by a concert of the powers, but it must not be forgotten that the position of the United States, as well as her past history, go far toward eliminating the need of joint action on the part of all the states. It is not good policy, at least, for one country of itself to judge the moral or immoral conduct of another country, for it is likely to be abused. It cannot be pretended that the intervention in this case was at all legal, though it could be claimed that it was moral, were there no questions of self-interest involved. It may well be asked, whether, even if the intervention could be justified on moral grounds, it was not possible to have secured the desired end without armed intervention. If so, then intervention could not be justified on moral grounds, but this phase of the question will be considered in the next chapter.

The Spanish Treaty Claims Commission.

Our government often characterized the war in Cuba as uncivilized, barbarous, and contrary to the accepted

methods of civilized nations in waging war. This was one of the alleged motives for intervention, as we have seen, though we have reached the conclusion that intervention was hardly justified on that account. It was, however, undoubtedly our strongest ground for intervention. It may be well now to submit evidence after the fact to strengthen the conclusion we have already reached.

The seventh article of the treaty of peace concluded between Spain and the United States, December 10, 1898, reads as follows:

Art. VII. "The United States and Spain mutually relinquish all claims for indemnity, national and individual, of every kind, of either government, or of its citizens or subjects, against the other government that may have arisen since the beginning of the late insurrection in Cuba and prior to the exchange of ratifications of the present treaty, including all claims for indemnity for the cost of the war.

"The United States will adjudicate and settle the claims of its citizens against Spain relinquished in this article."

By act of Congress, March 2, 1901, a commission was appointed, known as the Spanish Treaty Claims Commission, to pass on the claims assumed by the United States in the above article. It may be well to give in full the rules or principles by which the Commission stated it would be governed in passing upon the various claims.

The following rules were announced November 24, 1902 and April 28, 1903:

"1. Under Article VII of the treaty of Paris the United States assumed the payment of all claims of her own citizens for which Spain would have been liable according to the principles of international law. It follows, therefore, that the sole question before this Commission is that of the primary liability of Spain, which is not in any way enlarged by the agreement of the United States to adjudicate and pay such claims.

"2. Although the late insurrection in Cuba assumed great

magnitude and lasted for more than three years, yet belligerent rights were never granted to the insurgents by Spain or the United States so as to create a state of war in the international sense which exempted the parent government from liability to foreigners for the acts of the insurgents.

"3. But when an armed insurrection has gone beyond the control of the parent government, the general rule is that such government is not responsible for damages done to foreigners by the insurgents.

"4. This Commission will take judicial notice that the insurrection in Cuba, which resulted in intervention by the United States and in war between Spain and the United States, passed, from the first, beyond the control of Spain, and so continued until such intervention and war took place.

"If, however, it be alleged and proved in any particular case before this Commission that the Spanish authorities by the exercise of due diligence might have prevented the damages done, Spain will be held liable in that case.

"5. As war between Spain and the insurgents existed in a material sense, although not a state of war in the international sense, Spain was entitled to adopt such war measures for the recovery of her authority as are sanctioned by the rules and usages of international warfare. If, however, it be alleged and proved in any particular case that the acts of the Spanish authorities or soldiers were contrary to such rules and usages, Spain will be held liable in that case.

"6. As this Commission has been directed by Congress to ascertain and apply the principles of international law in the adjudication of claims of neutral foreigners for injuries to their persons and property caused by a parent state while engaged in subduing by war an insurrection which had passed beyond its control, it cannot fail, in determining what are and what are not legitimate war measures, to impose upon the parent state such limitations as the consensus of nations at the present day recognizes as restricting the exercise of the right to remove all the inhabitants of a designated territory and concentrate them in towns and

military camps and to commit to decay and ruin the abandoned real and personal property or destroy such property and devastate such region.

"7. Adopting therefore a wide and liberal interpretation of the principle that the destruction of property in war where no military end is served is illegitimate, and that there must be cases in which devastation is not permitted, it should be said that whenever reconcentration, destruction, or devastation is resorted to as a means of suppressing an insurrection beyond control the parent state is bound to give the property of neutral foreigners such reasonable protection as the particular circumstances of each case will permit. It must abstain from any unnecessary and wanton destruction of their property by its responsible military officers. When such neutral foreigners are included in the removal or concentration of inhabitants, the government so removing or concentrating them must provide for them food and shelter, guard them from sickness and death, and protect them from cruelty and hardship to the extent which the military exigency will permit. And finally, as to both property and persons, it may be stated that the parent state is bound to prevent any discrimination in the execution of concentration and devastation orders against any class of neutral foreigners in favor of any other class or in favor of its own citizens.

"8. Subject to the foregoing limitations and restrictions, it is undoubtedly the general rule of international law that concentration and devastation are legitimate war measures. To that rule aliens as well as subjects must submit and suffer the fortunes of war. The property of alien residents, like that of the natives of the country, when 'in the track of war' is subject to war's casualties, and whatever in front of the advancing forces either impedes them or might give them aid when appropriated, or if left unmolested in their rear might afford aid and comfort to the enemy, may be taken or destroyed by the armies of either of the belligerents; and no liability whatever is understood to attach to

the government of the country, whose flag that army bears and whose battles it may be fighting.

"If in any particular case before this Commission it is averred and proved that Spain has not fulfilled her obligations as above defined she will be held liable in that case.

"9. It is the opinion of the Commission that the treaty of 1795 and the protocol of 1877 were in full force and effect during the insurrection in Cuba, and they will be applied in deciding cases properly falling within their provisions.

"10. As to the first clause of Article VII of the said treaty, wherein it is agreed that the subjects and citizens of each nation, their vessels, or effects shall not be liable to any embargo or detention on the part of the other for any military expedition or other public or private purpose whatever, the Commission holds that whether or not the clause was originally intended to embrace real estate and personal property on land as well as vessels and their cargoes, the same has been so construed by the United States, and this construction has been concurred in by Spain; and therefore the Commission will adhere to such construction in making its decisions.

"11. But neither this particular clause nor any other provision of the treaty of 1795 will be so applied as to render either nation, while endeavoring to suppress an insurrection which has gone beyond its control, liable for damages done to the persons or property of the citizens of the other nation when found in the track of war or for damages resulting from military movements unless the same were unnecessarily and wantonly inflicted."[46]

The seventh and eighth propositions are especially interesting to us since they more or less agree with the conclusions we had reached, for it does not appear that Spain violated either of the propositions or rules as stated by the

[46] Sen. Doc. No. 25, 2d Sess., 58th Cong., pp. 5-7.

Commission. By these propositions the Commission sanctions the reconcentrado order of Weyler, against which our government so strongly protested, and recognizes that Spain was acting legitimately all the while in her efforts to suppress the insurgents, and in this view we entirely concur. Our government considered that the concentration orders were largely responsible for the horrible state of affairs in Cuba, and so to that extent were greatly responsible for intervention on humanitarian grounds, if indeed the intervention was made on those grounds. Thus our government, by a somewhat strange coincidence, stands practically self-condemned for interfering, since a Commission appointed by it, composed entirely of our own citizens, have declared that the concentration orders were legitimate and sanctioned by the civilized nations of the present day as civilized methods of warfare, notwithstanding the fact that the Executive Department of our government had repeatedly declared such methods to be barbarous and uncivilized and that Congress had practically indorsed the Executive by enacting legislation requested by him. There is no evidence to show that Spain violated the principles as stated by our Commission, but there is evidence to show that she did not discriminate against, but in favor of, Americans; that she did what she could, to the extent which the military exigency permitted, to relieve suffering, provide food, shelter, etc., for the reconcentrados. There is also evidence to show that the concentration orders were made for military purposes, and this was recognized by Cleveland in his message to Congress, December 6, 1896.

Commissioner Chandler[**] gives the orders of Weyler, Gomez, Grant, Sherman, Sheridan, and Ewing, and it may be said that the orders of Weyler are about as humane as any of them—and in some instances more so. Chandler quotes Sherman as saying in his memoirs: "I do sincerely believe that the whole United States, North and South,

[**] Ibid., pp. 123-134.

would rejoice to have this army turned loose on South Carolina, to devastate that state in the manner we have done in Georgia." (p. 213.) He also gives the letter of General Halleck to Sherman, in which the former says: "Should you capture Charleston I hope that by *some accident* the place may be destroyed, and if a little salt should be sown upon its site it may prevent the growth of future crops of nullification and secession." (p. 223.) General Halleck, who was chief of staff to Grant, gave orders to Hunter to make all the valleys south of the B. & O. road a desert as far as possible, and that the people should be notified to move out. Grant also wanted "his (Hunter's) troops to eat out Virginia clear and clean as far as they go, so that crows flying over it for the balance of the season will have to carry their provender with them."[87] Having sanctioned such orders as these, how could our government consistently protest against the Spanish concentration orders? Commissioner Chandler, with whom concurred Messrs. Wood and Diekema, noted the fact that McKinley had been in the Union army and knew of the concentration orders of General Ewing in Missouri, as well as of Sherman's and Sheridan's devastation, and adds:[88] "But the President had not then seen and probably did not anticipate the concentration and devastation by United States troops under General Bell in the Philippines. Possibly if he had supposed that in addition to arousing just national indignation, in order to bring on war with Spain for the liberation of Cuba, he was announcing a new principle of international law, and making a finding of facts happening in war which should be conclusive and binding upon the United States courts in all future time, he would have withheld or moderated the soul-stirring utterances with which he began a great war for the freedom and independence of a new nation." After referring to McKinley's characterization of the reconcentration orders, the Commis-

[87] Ibid., p. 134. [88] Ibid., p. 101.

sioners ask: "Are these earnest utterances of his sentimental appeal to arms to be the law and the facts upon which, without further investigation or meditation, the Commission is to reach its judgments upon claims?"[69] The majority of the Commission thus apparently criticizes the view taken by the Executive Department. The counsel for the claimants before the Commission argued that they should follow the statement of the Executive and this was the view taken by Messrs. Chambers and Maury of the Commission. The latter said that the Commission was bound to hold the concentration orders as uncivilized warfare, since the political department of the government had so declared, but the majority of the Commission held that decisions might thus be made on false principles and non-existent facts, and that such doctrines were intolerable. "In other words, the decisions of the Commission must be made upon principles which are contrary to those of international law and are applied to facts which do not exist, if the Executive of the United States has at any time asserted those unsound principles and assumed those non-existent facts."[70]

The Commission said it would only hold those claims valid for which Spain would have been liable had no war taken place between Spain and the United States, and that as the principles of international law only would have been applied in that case, so would it be held in this case, the declarations of the Executive Department not being considered binding.[71] In another place the Commission says: "To claim that we are bound by erroneous assertions of law and fact made by the President in his numerous messages to Congress is an urging of subserviency further than the Commission is willing to go."[72] The Commission here clearly intimates that the President made erroneous assertions, and a close examination of the facts justifies the conclusion. Mr. Diekema says: "The Commission, therefore,

[69] Ibid., p. 100.
[70] Ibid., p. 99.
[71] Ibid., p. 103.
[72] Ibid., p. 109.

cannot resist the conclusion that Spain was a 'reasonably well-ordered state,' within the meaning of that term in international law, and also, on the whole, exercised that degree of diligence in suppressing the insurrection which the law of nations requires."[73] These statements, together with the third and fourth propositions by which the Commission was governed in adjudicating the claims, go far toward weakening the contentions of our government in justification of intervention.

To state that the parent government is not responsible for the acts of the insurgents is more than our government ever admitted. In fact President Grant in his message of December 7, 1875, gave as one of the reasons for not recognizing the Cubans as belligerents that such recognition "would release the parent government from responsibility for acts done by the insurgents," and McKinley incorporated this language in his message of December 6, 1897.[74]

Chief Justice Fuller, in the case of "The Three Friends" (166 U. S. p. 63), gives as one of the effects of the recognition of belligerency, "the abandonment of claims for reparation on account of damages suffered by our citizens from the prevalence of warfare."

Mr. Maury, in his dissenting opinion, said, in regard to the fourth proposition as stated by the majority of the Commission, "If Spain was already released from liability for acts of the insurgents by the magic of the 'beyond control' doctrine, it was little less than solemn trifling for our Executive to allege as a ground against conceding recognition to the Cubans that such action would release Spain from liability to our citizens for their acts." Said he, the "beyond control" had involved "the United States in the inconsistency of having pressed upon the attention of the government of Spain claims of our citizens for losses and injuries caused by the insurgents, as indicating 'that the rights granted by international law and by treaty to the citizens of

[73] Ibid., p. 39.

[74] Ibid., p. 170.

the United States residing in Cuba have not been observed by the Spanish authorities in the island' and of having compelled Spain to settle these and other claims by cession of territory and of now refusing, with satisfaction in its hands to recognize these claims as having any validity." Continuing, he said: "Indeed, this action of the Commission has a still more serious phase, for if it was the exercise of a valid jurisdiction it is binding on the United States, and might provoke Spain to complain of having been compelled to grant indemnity for what the United States now repudiates."[76] This does seem to follow as a logical conclusion, and our government through its Attorney General and this Commission, has now taken the position which Spain always maintained, and correctly we believe, in most cases. While the majority of the Commission evidently have the facts and weightier evidence to sustain their statements and conclusions, yet the minority have closely followed the declarations of the Executive Department and their conclusion is thus more consistent with the action of our government.

Commissioner Chandler did not hesitate to say, even though he criticized the assertions of the Executive as to concentration, that "the war begun by the United States against Spain was the most disinterested conflict hitherto known in the history of the world.... Never was self-interest less considered in a war of one nation to secure and maintain the freedom and independence of an alien people despotically governed and systematically oppressed."[77] There seems to be a great lack of consistency in the opinions and statements of the majority of the Commission, for in connection with the above statement, we should remember that Mr. Chandler practically assents to Mr. Wood's statement that the war was waged on account of injury to commerce, the expense of maintaining neutrality, danger of contagion on account of unsanitary conditions in Cuba, destruction of American property in Cuba, the suffering of non-combatants, etc."

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[76] Ibid., p. 171. [77] Ibid., p. 88. [77] Ibid., p. 49.

Commissioner Maury said the question for the Commission to determine was: "What claims the United States had decided for itself that Spain was liable for, and then, with sword still in hand, forced Spain to settle by cessions of territory," [78] and so, according to this view, the primary liability of Spain would not have to be considered.. Mr. Maury, however, goes rather to the extreme, when he says that Spain must be taken to have acquiesced in the judgment of our government as to the concentration orders being in violation of the rules of civilized warfare, since she abandoned the odious features of them, in obedience to the remonstrances of the United States, and thus fixed her liability under the law of nations." [79] This does not necessarily follow, for there can hardly be any question but that Spain revoked those orders in order to quiet the United States, and besides Blanco did not seem to regard them as very effective.

Mr. Chambers, in his dissenting opinion, is somewhat inconsistent, and besides makes some statements which are hardly justifiable. "Just as a nation," he says, "when it intervenes in the internal affairs of another, is heavily burdened with the proof that it vindicates a right, in the same sense is a nation, when it refuses belligerent rights to rebels and adopts measures to suppress an insurrection, heavily burdened with the proof that the destruction of the neutral's property as a war measure was necessary." [80] After stating that a nation must produce strong evidence to justify intervention, he almost in the same breath says: "Until the United States declared war against Spain (this had to be done before intervention in Cuba) it was an open question whether the right existed, and was a subject of international discussion; but when the declaration was made the incident was thereupon closed, and that act itself decided the existence of the cause for intervention and became its own justification." [81] According to this doctrine the state can do no wrong.

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[78] Ibid., p. 154.
[79] Ibid., p. 174.
[80] Ibid., p. 198.
[81] Ibid., p. 198.

Mr. Crammond Kennedy writing in the North American Review for February 1905, says, in regard to the report of the Commission, that it was proper and natural for the United States to demand indemnity for the injuries and losses suffered by her citizens during the insurrection, since the grounds and purposes of the war were given in the President's message of April 11, 1898. He says the Commission has put most of the claims in peril by virtually ignoring the war of intervention, and by declaring that, under the law of nations, Spain was not liable for the acts of the insurgents, and that concentration and devastation were legitimate war measures. He furthermore states that the Commission had substantially decided that the grounds on which the United States intervened were false or mistaken, and that Spain was all the time within her rights in what she did in the island. This does not appear to be too strong a statement, and we might say that even if the Commission had decided otherwise, the fact would still remain that the United States was hardly justified in intervening. The mere fact, however, that a Commission appointed by the same government which carried on the war, while declaring the war just and the most disinterested of modern times, yet practically decides that the grounds upon which and for which war was begun and waged were false or mistaken, strengthens the conclusion which has been reached by the facts as we have been able to see and to judge them. We do not know whether the decision of the Commission will be sustained by the other Departments of our government, but we venture to say that it will stand, for the decision does not go to quite the length for which the Attorney General contended. Our government thus stands before the world as having said after the war that there was little justification for the war—at least as having eliminated the great cause of the war.

After giving evidence after the fact which strengthens our conclusion that the United States was not justified in intervening on any of the grounds which she alleged,

it may be well to consider whether there was not sufficient justification if all of the motives be taken together. In other words, if we do not believe the United States was justified in intervening either on account of the *Maine*, for injury to commerce, for injury to American property or citizens in Cuba, for self-preservation, or for humanity, might not all these various reasons or grounds be merged, so to speak, into one complex whole or cause which would justify intervention? It is seldom that one act of itself results in war—often a mere trifle, after repeated or continued provocation, is sufficient to "loose the dogs of war." The question thus becomes rather complex, and a categorical answer can hardly be given.

While it is probably true that intervention would not have occurred when it did had it not been for the destruction of our battleship, and while we have already reached the conclusion that that fact did not warrant intervention, it is equally true, we believe, that had there been no other complications or causes for intervention, the United States would not have intervened. It may also be said that the United States would not have intervened on account of any one of the other causes which were given as justifying her action, if those causes were taken separately, that is, had there been nothing more than the injury to our commerce, intervention would not have taken place when it did, if at all. This applies with equal force to each of the other causes with the possible exception of humanity. It would thus appear that no one of the reasons, save possibly that of humanity, would have brought about intervention; but that when all of these causes were taken together that was the result. It is doubtful whether international law takes into consideration cumulative causes in this way, though it seems that when such causes are strong enough they should be considered just as they are in criminal law. If this theory is accepted then the intervention in Cuba can possibly be justified, provided all the diplomatic means of accomplishing the desired ends were

previously exhausted. As to whether this was done or not remains to be seen in the chapter that follows.

After all is said and done, however, it must be recognized that states in their international relations are not bound by hard and fast rules, and while it would not do to recognize as a definite and general principle of international law that one state may decide as to the morality or humanity of the conduct of another state, it is nevertheless certain that no state can or should be wholly indifferent to the morality of the conduct of another state, even when that state is acting within its technical rights. We have already seen that the intervention in Cuba cannot be justified according to these strict principles of international law, but there was a feeling on the part of the people of the United States that Spain was not sincere in her promise to grant autonomy and self-government to the island, or that if she was that she would be unable to enforce them. It was also strongly felt that Spain was really unable to subdue the insurgents and that something should be done for the sake of humanity. Thus we may say that though the United States may have failed in her efforts to justify the intervention by the principles of international law, yet when judged from the viewpoint of what may be termed the higher principles of international morality, she may have had justification for her action. It is therefore to be emphasized that the aim of the author in preparing this study has been, not to determine whether or not the United States, taking everything into consideration, was justified in intervening, but to determine whether the technical arguments, which she advances to justify herself in doing so, were in fact, when judged from the viewpoint of strict international law, valid arguments.

CHAPTER III.

Spain's Efforts to Avoid War.

There is another proposition which we have not thus far considered, and that is, granting that the alleged motives or reasons within themselves were such as to warrant intervention, is it not possible that the purposes for which intervention was made, *i. e.*, as alleged by the United States, could have been obtained through diplomatic channels or by moral pressure? It is to this phase of the question that we now turn our attention. If it can be shown that practically the same things could have been obtained for Cuba without resorting to arms, then it seems we must conclude that intervention was not justifiable, especially for the time being. The principal reason—at least the strongest reason for intervention was to put an end to the struggle and its evils in Cuba. If the insurrection should come to an end, of course the other evils, of which the United States complained, would cease.

We have already seen that Spain proposed the only proper way of disposing of the *Maine* affair, that is, to leave it to the decision of disinterested parties. This eliminates a very important consideration or factor, for it was largely due to the *Maine* that intervention took place. Even Mr. Taylor, an advocate of intervention, admits this. Mr. Woolsey and Minister Woodford also state the same thing. Leaving this out of consideration, it thus seems more than probable that intervention would not have taken place when it did.

But how about the other questions? From a study of the diplomatic correspondence which has been published, one is forced to the conclusion that Spain was gradually, but slowly and surely yielding to the demands of the United

States. We have already seen how Spain yielded to the demands or requests of the United States in regard to the exportation of tobacco—granting more than was really requested, and that fair treatment was usually given to Americans who were captured. President McKinley noted the fact (in his message of December, 1897) that not a single American was in prison so far as the State Department was aware, and Mr. Hyatt, United States Consul at Santiago, in a letter to Mr. Day, November 26, 1897, said that all American prisoners had been released from time to time by special orders. Spain thus clearly showed her desire and anxiety to avoid a conflict with the United States, often complying with our requests when she would have been perfectly justified in refusing them.

Mr. Sherman, in his instructions to Mr. Woodford, July 16, 1897, suggested that the time had come for Spain to make "proposals of settlement honorable to herself and just to her Cuban colony"—of course having reference to autonomy, for Mr. Woodford, in conversation with the British Ambassador at Madrid, speaking of the same thing uses the word autonomy. Mr. Woodford first communicated the contents of Sherman's instructions to the Spanish government September 23, 1897. Señor Gullon, in his reply October 23, said that the present (Sagasta) ministry proposed to carry out the manifesto of the Liberal party which was made June 24, 1897, before it came into power. This manifesto favored fair treatment for the Cubans—in fact an autonomous government. On November 13, 1897, Mr. Woodford wrote to Mr. Sherman that the Queen would sign the decrees granting autonomy to Cuba about November 25. The Queen did sign three decrees or bandos on that date which granted practical autonomy to the Cubans. The Sagasta ministry might have proposed those decrees anyway, but it seems significant that the suggestion or request of the United States should have been so promptly followed. As to whether or not these decrees would have been put into execution for any length of time is a question

which does not concern us here. What does concern us is that these decrees did practically grant what the United States suggested, and Señor Gullon,[1] in his memorandum of April 18, 1898, called attention to this happy coincidence.

Our government protested very strongly against the reconcentrado order of Weyler. Blanco sailed from Spain for Cuba October 19, 1897. On November 13, 1897, he issued a bando partially revoking that order, thus again showing a desire to please our government. The order was entirely revoked somewhat later.

De Lôme, Spanish Minister at Washington, in a private letter, had criticized the President, using disrespectful terms in speaking of him. This letter was stolen from the Post Office in Cuba and published. Whereupon De Lôme resigned, his resignation being immediately accepted, disavowal of his action being made by the Spanish government. Mr. Day, in a note to Mr. Woodford, March 3, 1898, said that the De Lôme incident was fortunately closed.[2]

Mr. Woodford, writing to the President February 26, 1898, says he has secured the practical adjustment of every important matter committed to him. Speaking of the desire of the Spanish government to avoid war, he says: "They want peace if they can keep peace and save the dynasty. They prefer the chance of war, with the certain loss of Cuba, to the overthrow of the dynasty. . . . . While I do not think they can make any more direct concessions to us and retain their power here, I do begin to see possible ways by which they can make further concessions to Cuba through the insular Cuban government and so, possibly, avert war." . . . . And again, "as hitherto reported, they can not go further in open concessions to us without being overthrown by their own people here in Spain."[3]

While the Spanish government realized that Consul-General Lee was anti-Spanish, yet it did not ask for his

[1] Spanish Red Book, 1898.
[2] For. Rel., 1898, p. 680.
[3] Ibid., p. 665.

recall, as our government had intimated that such a request would not be granted. In an unofficial way Mr. Woodford was informed of the Spanish view of Lee's attitude, for he was told that Spain did not regard his reports as trustworthy, and that he (Lee) freely admitted he was deadly against autonomy.[4]

Mr. Woodford wrote the President on March 9, 1898, that a very prominent Spanish merchant had given a family dinner at which the latter talked very deliberately and logically about the Cuban situation. "He said, in substance," wrote Mr. Woodford, "that Spain had done all she could do or expected to do in recalling Weyler, in sending Blanco, in abandoning the policy of reconcentration, in establishing legitimate warfare, in rescinding the tobacco edicts, in encouraging planting and grinding, in establishing autonomy, in offering full pardon to all rebels, in permitting Cuba to make her own tariff regulations, and finally in entering deliberately and honestly on the negotiation of commercial treaties that should open the market of Cuba to reciprocal trade with the United States."[5] In letter of March 17, 1898, he said he had more faith in possible peace than he had had since he left the United States, though he seemed to think that it would result in the purchase of Cuba by the United States.[6] On the next day he wrote about a heated meeting of the Council of Ministers, and said that the ministers of war and navy advised immediate action, as each day increased the war preparations of the United States ($50,000,000 had been appropriated by Congress about March 8), but "that Moret had argued for peace; that Sagasta had finally and positively declared for peace on any terms at all consistent with Spanish honor; that the peace party had triumphed; and that the ministers of war and navy had withdrawn their threats of possible resignation."[7] In the same letter he tells of a conversation with Minister

[4] Ibid., p. 675.
[5] Ibid., p. 682.
[6] Ibid., p. 687.
[7] Ibid., p. 688.

Moret, in which the latter said: "We must have peace with honor to Spain. Tell me what can be done." Mr. Woodford replied that he thought autonomy a failure for the present at least, and that there was only "one power and one flag that can secure peace and compel peace. That power is the United States, and that flag is our flag." Mr. Moret asked, "Is that your serious and settled judgment?" To which Mr. Woodford replied, "It is." Continuing the letter says: "He was quiet for a while. I saw that he grew very pale. Then he gathered himself together and replied: 'What do you suggest?'" Mr. Woodford then suggested that the only solution was the sale of the island by Spain to the United States, and that this need not be made public, but could be in secret memorandum. At the close of the conversation Mr. Moret said: "I do not commit myself to details. The right way can be found if we will both do our best, and I will work with you for peace, and I am sure we shall get together as to details. This must be confidential between us, for we are not talking as officials."

On March 19, Mr. Woodford cabled the President as follows: "If you will acquaint me fully with general settlement desired I believe Spanish government will offer without compulsion and upon its own motion such terms of settlement as may be satisfactory to both nations." This telegram was shown to Moret, and while he did not approve it officially, yet said he would work personally with Mr. Woodford to secure the results therein indicated. In the same letter in which he tells of this, he states that Moret said the Queen would prefer to abdicate her regency and return to Austria rather than part with any of Spain's colonies, but continuing, he says: "I am sure that Mr. Moret to-day regards this [parting with Cuba] as inevitable, and is only seeking the way in which to do it and yet save Spanish honor. He will probably find the way to do it, even if he

has to sacrifice himself. I hope this last may not be necessary. I do not believe it will be."[8]

Mr. Woodford, in a telegram to the President, March 25, 1898, said: "He (Moret) says that if we asked for immediate armistice he believes Spanish government will grant it and enforce armistice on sole condition that insurgent government does the same." Mr. Woodford requested authority to ask the Spanish minister of foreign affairs the following question: "Will you decree and enforce immediate armistice until the end of the rainy season if insurgent government will do the same?" Continuing, he said, "I believe that if immediate peace can be secured now, lasting until September 15, hostilities will not be resumed." In reply to the above request, Mr. Day telegraphed March 26, 1898, "For your own guidance, the President suggests that if Spain will revoke the reconcentrado order and maintain the people until they can support themselves and offer to the Cubans full self-government, with reasonable indemnity, the President will gladly assist in its consummation. If Spain should invite the United States to mediate for peace and the insurgents would make like request, the President might undertake such office of friendship."[9] It seems that our government thus clearly avoided giving a direct answer, and there must have been some ulterior motive in it.

On March 27, Mr. Day cabled Woodford to see if the following could be obtained:

"First. Armistice until October 1. Negotiations meantime looking for peace between Spain and insurgents through friendly offices of President of the United States.

"Second. Immediate revocation of reconcentrado order so as to permit people to return to their farms, and the needy to be relieved with provisions and supplies from the United States cooperating with authorities so as to afford full relief.

"Add if possible:

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[8] Ibid., pp. 692-93.

[9] Ibid., p. 704.

"Third. If terms of peace not satisfactorily settled by October 1, President of the United States to be final arbiter between Spain and insurgents.

If Spain accepts, President will use friendly offices to get insurgents to accept plan. Prompt action desirable."[10]

On the same day, but before receipt of the above telegram, Mr. Woodford sent a telegram to Mr. Day in which he asked what was meant by "full self-government, with reasonable indemnity." He also asked whether it would be satisfactory if he could secure immediate and effective armistice or truce to take effect on or before April 15. He stated that he might be able to induce the Spanish Minister to submit the question of peace to the Cuban Congress which would meet at Havana May 4, and asked, "If I can secure these two things with absolute and immediate revocation of concentration order may I negotiate? I believe that an immediate armistice means present and permanent peace." He also stated that he believed this would mean practical independence for Cuba or that it would pass from Spanish control.[11] Mr. Day replied to this the following day, March 28, that "full self-government with indemnity would mean Cuban independence." In another telegram of the same day he said: "Important to have prompt action on armistice matter."

Of the two concessions which Mr. Day, March 27, requested Woodford to see if he could obtain, the second one, the revocation of the reconcentrado order, was granted March 30, 1898.[12] General Blanco published a bando revoking the order throughout the whole island. This was in accordance with instructions from the home government.[13] On the next day, March 31, the Council of Ministers made in substance the following statements.

1. That Spain was willing to submit the question of the *Maine* to arbitration.

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[10] Ibid., pp. 711-12.
[11] Ibid., p. 713.
[12] Ibid., p. 725.
[13] Ibid., p. 726.

2. That revocation of reconcentrado order had been published by Blanco, and that 3,000,000 pesetas (about $600,000) had been placed at disposal of Blanco to enable the country people to return to their work.

3. That the question of peace would be confided to the insular parliament.

4. That armistice would be granted if asked for by the insurgents.

Our government had requested the second one and Mr. Woodford had asked for the third, apparently with the assent of our government, as he had informed the State Department of his intentions, so that the Spanish government had granted without delay, reservation, or hesitation two of the requests, and the fourth one was almost a concession. No doubt the Spanish government thought it too much for the Spanish pride and honor to request an armistice of the insurgents, and it does seem that the request should have come from the other side.

In a telegram to the President just after the above conference, Mr. Woodford says,[14] "I am told confidentially that the offer of armistice by Spanish government would cause revolution here. Leading generals have been sounded within the last week, and the ministry have gone as far as they dare to go to-day. I believe the ministry are ready to go as far and as fast as they can and still save the dynasty here in Spain. They know Cuba is lost. Public opinion in Spain has moved steadily towards peace. No Spanish ministry would have dared to do one month ago what this ministry has proposed to-day." In letter to the President, April 1, he says: "The Spanish ministers said yesterday that their statement went as far as they could possibly go. Perhaps this is true, but they said the same some weeks ago and yesterday they yielded on two points." And in a letter to Mr. Day on the following day, he says: "I have worked hard for peace. I am hoping against hope, and

[14] Ibid., pp. 727-28.

still I cannot bring myself to the final belief that in these closing years of the nineteenth century Spain will finally refuse, on a mere question of punctilio, to offer immediate and effective armistice. I still believe that immediate armistice will secure permanent and honorable peace with justice to Cuba and sure protection to our great American interests in that island. . . . . If arms are now laid down on both sides they will not be taken up again." [18]

Mr. Woodford was right in his belief that Spain would finally yield to our request for an armistice, for on the next day he cabled the President that the Pope would offer his mediation to get Spain to grant an armistice. Señor Gullon thought the Spanish government would accede to the papal request, but that it asks the United States to show their friendship for Spain by withdrawing their warships from vicinity of Cuba as soon as armistice is proclaimed, and Mr. Woodford added that he trusted our government would do this. Continuing, he said: "If conditions at Washington still enable you to give me the necessary time I am sure that before next October I will get peace in Cuba with justice to Cuba and protection to our great American interests. I know that the Queen and her present ministry sincerely desire peace and that the Spanish people desire peace, and if you can still give me time and reasonable liberty of action I will get for you the peace you desire so much and for which you have labored so hard." [19] Mr. Woodford mentioned the fact that he was informed that the Pope's proposal was at the suggestion of the American government, but he thought this a mistake; and so it proved to be. It seems that, for some cause, President McKinley, or at least our government, was not now so anxious to secure peace, for a peace was now clearly within reach which Mr. Woodford thought would mean the practical abandonment of Cuba to Spain, but our government was unwilling to accept the conditions which it had prescribed as

[18] Ibid., p. 731.

[19] Ibid., p. 732.

necessary to bring about an amicable settlement of matters. For in reply to the telegram of Mr. Woodford, saying that peace was practically in sight, Mr. Day cabled the same day that armistice must be voluntary on the part of each, and that to be effective it must be immediately proffered and accepted by the insurgents, and adds: "Would the peace you are so confident of securing mean the independence of Cuba?"[17] The President had said, through Mr. Day, on March 27, that he would try to get the insurgents to accept the plan if proposed by Spain. So that within a week our government receded from its position. There was nothing in any of the notes to Mr. Woodford to encourage him in striving for amicable settlement, but new demands were forthcoming as soon as he got concessions for the others. To the request of the Spanish government, which seems a legitimate and justifiable one, that our warships be withdrawn from vicinity of Cuba and Key West as soon as armistice was published, our government replied that it would dispose of its ships as it pleased.

Mr. Sherman cabled Mr. Woodford, April 4, that Congress would probably take decisive action by the end of the week and to be ready to go to Paris in case of rupture.[18] This shows that our government was not expecting peace. On April 5, Mr. Woodford cabled the President and asked whether he would sustain the Queen and prevent hostile action by Congress should she proclaim immediate and unconditional suspension of hostilities in the island. Then he continued: "Please read this in the light of all my previous telegrams and letters. I believe this means peace, which the sober judgment of our people will approve long before next November, and which must be approved at the bar of final history."[19] To this Mr. Day replied that night that the President highly appreciated the Queen's desire for peace, but that he could not undertake to influence Congress beyond a discharge of his constitutional duty in placing the

[17] Ibid., p. 733. [18] Ibid., p. 733. [19] Ibid., p. 735.

whole matter before them with such recommendations as he thought necessary and expedient. He said that if an armistice was offered by the Spanish government he would communicate that fact to Congress.[20]

On April 6, the representatives of six European powers presented a joint note to the President appealing to him in the hope that further negotiations would lead to an agreement securing peace.[21] The President had intended to send his message to Congress that day, but this was not done at the request of Consul-General at Havana, for Mr. Day, in telegram to Woodford that day says: "The President's message will not be sent to Congress until next Monday to give Consul-General at Havana the time he urgently asks to insure safe departure of Americans."[22]

Mr. Woodford wrote Mr. Sherman on April 8, "the sober sense of Spain is slowly but surely coming to the front, and a few days (if these few days can still be had) will see a crystallized, public sentiment that will sustain the present Spanish government, if that government has the immediate courage to do at once the things that are necessary for peace."[23] But these few days were not given, though the Spanish government did act immediately and courageously, for the die was cast when the President sent his message to Congress April, 11.

On April 9, an armistice was granted by the Spanish government, and this information Mr. Woodford at once cabled to Day.[24] General Blanco was directed to grant suspension of hostilities at once. By this act the Spanish government had acceded to the only request of our government which had not previously been granted. Step by step, the Spanish government had acceded to the demands of our government in the hope of obtaining peace, until she had crowned her efforts to avoid war by granting an unconditional armistice to insurgents who had not asked for it.

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[20] Ibid., p. 735.
[21] Ibid., p. 740.
[22] Ibid., p. 743.
[23] Ibid., p. 745.
[24] Ibid., p. 746.

This was the last thing she could do without unconditionally granting independence to Cuba.

Mr. Woodford sent word to the President, April 10, the day after the armistice was granted, that he believed final settlement could be made before August on one of the following grounds: 1. Autonomy acceptable to the insurgents themselves. 2. Cession of the island to the United States. 3. Independence of the island. He added: "I hope nothing will now be done to humiliate Spain, as I am satisfied that the present government is going, and is loyally ready to go, as fast and as far as it can."[88]

On the next day, April 11, McKinley sent his message to Congress, and barely mentioned the fact that Spain had proposed arbitration as to the *Maine* and had granted an armistice. Very little was said of the revocation of the reconcentrado order, nothing said of Woodford's encouragement as to early peace, his request for more time, etc., while much space was given to the portrayal of the evil effects of the concentration orders, while they were in operation.

Two days later, April 13, the House, by a vote of 324 to 19, passed a resolution authorizing the President to intervene at once to put an end to the war in Cuba. On April 16, the Senate, 67 to 21, amended the House resolution. Conference followed, and early on the morning of the 19th, (3 a. m.) the resolution, as given in earlier part of this paper, (with addition that United States did not want Cuba), was passed; in the Senate, 42 to 35; in the House, 310 to 6. The joint resolution was approved by the President on April 20. On the same day the Spanish minister at Washington asked for his passports, saying the approval of the resolution by the President made it impossible for him to stay longer. In fact the resolution was equivalent to a declaration of war. On the 21st, and before Mr. Woodford had communicated the resolution with the formal demand that Spain relinquish authority in Cuba and giving only until the 23d, at noon, for favorable reply, the Spanish minister for foreign affairs

[88] Ibid., p. 747.

notified him that diplomatic relations were broken,[36] thus avoiding a fresh insult, as Señor Gullon says.[37]

After giving somewhat in detail the efforts of the Spanish government to avoid war, it seems that we may fairly and safely conclude that had our government met the concessions and desires of Spain for peace with a firm, but conciliatory, spirit, that war could have been avoided, and yet the actual, or at least the practical, freedom of Cuba have been obtained. The letters and dispatches of Woodford to the President and State Department clearly show that he thought this not only possible, but practicable, even to the last.

Mr. Woodford says he believes that the independence of Cuba would have been obtained without war had it not been for the destruction of the *Maine*, the De Lôme letter, and the suggestion that the President had requested the Pope to tender his good offices to get Spain to grant armistice.[38] If war would have or could have been avoided but for the three accidents or blunders to which Mr. Woodford refers, then it does appear that there is very little, if any, justification for intervention at the time, for surely no one will deny but that the Spanish proposition as to the *Maine* was the only proper one, and our State Department had already acknowledged that the affair of the De Lôme letter was settled, and had apparently approved Woodford's statement that he had accepted the explanation as to the third matter as full and sufficient.[39]

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[36] Ibid., pp. 760-767.
[37] Spanish Red Book, 1898, p. 138.
[38] This statement is made in a paper read by Mr. Woodford before the Hebrew Young People's Society of New York, March 8, 1904.
[39] For. Rel., 1898, p. 736.